

No. 15790

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United States  
Court of Appeals  
for the Ninth Circuit

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HALLDORA KRISTIN SIGURDSON,

Appellant,

vs.

WARD C. HOY, District Director  
Immigration and Naturalization  
Service, Los Angeles, California

Appellee.

Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California  
Central Division

FILED

FEB 25 1958

PAUL P. O'BRIEN, CLERK



No. 15790

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United States  
Court of Appeals  
for the Ninth Circuit

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HALLDORA KRISTIN SIGURDSON,  
Appellant,  
vs.  
ALBERT DEL GUERCIO, etc.,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### For Appellee:

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United States Attorney;  
ARLINE MARTIN,  
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Los Angeles 12, California.



United States District Court, Southern District  
of California, Central Division

No. 18089-WM

HALLDORA KRISTIN SIGURDSON,

Plaintiff,

vs.

ALBERT DEL GUERCIO, JOHN DOE and  
RICHARD ROE,

Defendants.

COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTION

Comes now the plaintiff Halldora Kristin Sigurdson and for cause of action against the defendants, and each of them, complains and alleges:

I.

That she now is and for more than ten (10) years last past has been a resident of the County of Los Angeles, State of California, being in the jurisdiction of the above-described Court.

II.

That this Court has jurisdiction of the above-described action for a Declaratory Judgment by virtue of 5 U.S.C. 1009, the provisions of the Act of June 14, 1934, as amended, commonly known as the Declaratory Judgments Act (Title 28, United States Code, Section 2201, et seq.).

## III.

That the defendant Albert Del Guercio is the duly appointed Officer in Charge of the Los Angeles office of the Immigration and [2\*] Naturalization Service of the United States and is under the supervision and direction of the Attorney General of the United States and the Commissioner of Immigration and Naturalization, as well as the District Director for this district, said District Director having headquarters in San Francisco, California; that said defendant Albert Del Guercio, as Officer in charge of the Los Angeles office, is charged with the administration and execution within said area of the above District of the Immigration and Naturalization Service orders and the immigration laws of the United States.

That plaintiff is informed and believes that defendants John Doe and Richard Roe are Acting Officers in Charge of the Los Angeles office of above-described agency with the same rights, duty and responsibility as the Officer in charge, as alleged, and that plaintiff so alleged upon her information and belief.

## IV.

That plaintiff does not know the true name or names of the defendants sued herein under the fictitious names of John Doe and Richard Roe and asks leave of this Court to amend showing the true name when same shall be duly ascertained.

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

## V.

That on or about the 30th day of March, 1953, the then District Director of this area for the above-described service, H. R. Landon, as District Director of the Immigration and Naturalization Service, issued or caused to be issued an Order of Deportation directing that the plaintiff be taken into custody and deported from the United States to Canada. Plaintiff is informed and believes and upon said ground avers that said Order of Deportation has never since been cancelled or vacated.

## VI.

Plaintiff alleges that all administrative remedies have been exhausted. [3]

## VII.

That plaintiff filed a petition for writ of Habeas Corpus in this Court on June 24, 1953, and said petition was denied on July 28, 1953. The United States Court of Appeals for the Ninth Circuit affirmed the judgment of the trial court on September 7, 1954, and the United States Supreme Court denied writ of certiorari on January 10, 1955.

## VIII.

Plaintiff contends that by virtue of said Order of Deportation she is about to be taken into custody for deportation and deprived of her liberty unlawfully, in violation of due process and the Fifth Amendment to the Constitution of the United

States, for reasons as hereinafter more fully set forth.

## IX

That on or about the 29th day of December, 1946, plaintiff entered the United States at Blaine, Washington, for permanent residence after full and complete compliance with the appertaining law; that she had been a resident since March, 1944, and permanent residence admission secured thereafter as alleged. That at all times since said December 29, 1946, plaintiff has been, and still is, a lawful permanent resident of the United States.

## X.

That plaintiff attended the University of Southern California at Los Angeles, from 1944 to 1950, attaining the collegiate degrees of A.B. and A.M. That the degree of A.B. was secured in 1948, A.M. in 1950. That she was a regular student for the bachelor's degree, while the master's degree was secured after obtaining employment as a teacher. That in July, 1949, plaintiff took a two-week vacation trip to Mexico and the last entry at San Ysidro, California, was the basis of the charge upon which the warrant of deportation was [4] based.

## XI.

That plaintiff filed her "Preliminary Form for Naturalization and Certificate of Arrival" early in the year 1951, and she has been awaiting processing of same since said date of filing.



## XII.

That during October, 1950, in response to a request for information from said service, plaintiff, was asked to report to said office at 1 p.m. on November 2, 1950. That she reported as requested and was interrogated by two investigators who were supposed to but did not record the interview, recording on a Dictaphone machine only what they desired and/or commanded plaintiff to state. That plaintiff is informed and believes and upon said ground alleges that eight Dictaphone belts were required to record as much as the investigators felt inclined.

## XIII.

That the said investigators of said service presented alleged transcripts of said interview of November 2, 1950, for signature to plaintiff and she refused to sign same on the grounds that they, and each of them, were inaccurate, incomplete and not made freely and voluntarily.

## XIV

That on or about the 11th day of October, 1951, plaintiff was served with a warrant of arrest for deportation upon the grounds that she had been a member of the Communist Party of the United States prior to her entry in 1949; that while she was a student at the university, it was claimed that she was a member of a club which was the campus cell of the Communist organization.

## XV.

That said warrant, plaintiff is informed and believes and upon said ground alleges, was based upon the illegal and unconstitutional examination of November 2, 1950, and the testimony of two professional witnesses, both of whom are perjurers. [5]

## XVI.

That she was granted a "so-called" hearing by the immigration service and the alleged statement of the November 2, 1950, interrogation was admitted into evidence over proper and valid legal objections and proof of its inadmissibility and proof that it was based upon spurious Dictaphone belts; that the hearing officer denied plaintiff the right to have the Dictaphone belts examined by Dictaphone Corporation experts to prove their spuriousness; that the hearing officer denied plaintiff right of reasonable cross-examination of a Government witness whom plaintiff subsequently proved a perjurer by documentary evidence; and, the hearing officer failed, neglected and refused to comply with the law set forth in 8 Code of Federal Regulations appertaining to conduct of deportation hearing.

## XVII.

That the habeas corpus proceeding was a denial of due process of law in that the immigration service failed to and refused to file with the Court a full and complete immigration file and the documents required under the Order to Show Cause issued at the time of filing of the petition for writ of habeas corpus.

## XVIII.

That the Immigration and Naturalization Service, by and through its then local District Director, H. R. Landon, has issued an Order of Deportation predicated upon the alleged statement of November 2, 1950, and the testimony of the two "alleged" witnesses and the decision of the hearing officer, all as hereinabove alleged, against the plaintiff on the ground that she had, prior to her re-entry, been a member of the Communist Party of the United States and by reason of the foregoing there is an actual controversy existing between the parties hereto with respect to the validity of said Order of Deportation and with respect to the enforcement thereof against the plaintiff by the defendants and/or defendant. [6]

## XIX.

Plaintiff is informed and believes and upon the basis of said information and belief alleges that unless restrained by the Order of this Honorable Court, the defendant Albert Del Guercio, and/or defendants John Doe and Richard Roe, by and through his/their agents and employees intends to and will take plaintiff into custody under color of said Order of Deportation and will deprive her of her liberty and of the opportunity to earn her livelihood, to her irreparable damage, and will continue to act without authorization in law and threatens to and will deprive plaintiff of her liberty without recourse.

## XX.

Plaintiff seeks (1) a Declaratory Judgment that the Order for the deportation of plaintiff issued, as aforesaid, on the 30th day of March, 1953, is void and without force or effect and, (2) an injunction restraining defendants, or any of them, from proceeding against the plaintiff under said Order, pending the determination of the validity of said order.

Plaintiff is without a plain, speedy or adequate remedy at law to prevent or redress such irreparable damage and injury as will result from her summary removal from the United States.

Whereupon, Plaintiff Prays Judgment as Follows:

1. That the Order of Deportation issued by the immigration service be declared illegal and void and without force or effect;
2. That an order be issued permanently enjoining and restraining defendants, or any of them, from deporting plaintiff;
3. Such other and further relief as is proper.

/s/ JOHN P. TOBIN,  
Attorney for Plaintiff.

Duly Verified.

[Endorsed]: Filed April 18, 1955. [7]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND  
TEMPORARY RESTRAINING ORDER

To Albert Del Guercio, Officer in Charge of the Los Angeles office of the United States Immigration and Naturalization Service and John Doe and Richard Roe, Acting Officer/Officers of said office for said agency of the Government:

Upon reading the verified complaint on file herein and good cause appearing therefore,

It Is Hereby Ordered That You be and appear in Courtroom No. 2 of the above-entitled Court on the 25th day of April, 1955, at the hour of 10 a.m., to show cause, if any you have, why the plaintiff, Halldora Kristin Sigurdson, should not receive the relief prayed for in the complaint on file herein, and,

It Is Further Ordered that pending the hearing of said Order to Show Cause the defendants, and each of them, be and is restrained and enjoined from deporting said plaintiff.

Dated April 18, 1955.

/s/ WILLIAM C. MATHES,  
Judge.

[Endorsed]: Filed April 18, 1955. [9]



[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Comes now the defendant, Albert Del Guercio, District Director of the Immigration and Naturalization Service at Los Angeles, California, and in answer to plaintiff's complaint on file herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraph I of plaintiff's complaint.

II.

Neither admits nor denies the allegations contained in paragraph II of plaintiff's complaint, the same being conclusions of law; alleges that if there is jurisdiction in a Declaratory Judgment Act to review the final order of the Immigration and Naturalization Service as to deportation of plaintiff, it is by [11] virtue of the provisions of the Administrative Procedures Act, 5 U.S.C. 1009 et seq.; it appears from paragraph XX of the complaint and the prayer thereof, that plaintiff seeks a judicial review of the final order of deportation. as distinguished from a trial de novo.

III.

Referring to the allegations contained in paragraph III of plaintiff's complaint, admits that the defendant, Albert Del Guercio, is presently the District Director of the Los Angeles District of the Im-

migration and Naturalization Service and is under the jurisdiction of the Commissioner of Immigration and Naturalization and the Attorney General of the United States and is charged with the administration and execution within the Los Angeles area of the above Immigration and Naturalization orders and the immigration laws of the United States. Denies each and every other allegation in said paragraph III contained, and alleges that the fictitious defendants John Doe and Richard Roe are improper and unnecessary parties to the action and should be dismissed therefrom.

#### IV.

Denies the allegations contained in paragraph IV with regard to the fictitious defendants and alleges that same are improper and unnecessary parties, that the allegation is immaterial and should be stricken, and that said parties should be stricken from the action.

#### V.

Admits the allegations contained in paragraphs V, VI and VII of plaintiff's complaint, and alleges that the previous action for petition for writ of habeas corpus was entitled In the Matter of the Petition of Halldora Kristin Sigurdson, No. 15648-C, in this Court, and that a copy of the Findings of Fact and Conclusions of Law and a copy of the Judgment which was filed, docketed and [12] entered July 28, 1953, in a habeas corpus proceeding, and affirmed on appeal by the Court of Appeals for the Ninth Circuit in Appeal No. 13974, are at-

tached hereto and made a part hereof, marked Exhibit A and Exhibit B, respectively.

## VI.

Referring to the allegations contained in paragraphs VIII and IX, denies said allegations except admits that on or about December 29, 1946, the plaintiff entered the United States at Blaine, Washington, for permanent residence.

## VII.

Referring to the allegations contained in paragraph X of plaintiff's complaint, denies said allegations and alleges that most of said allegations are immaterial and should be stricken, except admits that on or about July, 1949, plaintiff entered the United States at San Ysidro, California, and that said entry was the entry upon which the charges contained in a warrant of arrest dated October 11, 1951, were based.

## VIII.

Admits the allegations contained in paragraph XI of plaintiff's complaint, but alleges that same are immaterial and should be stricken.

## IX.

Denies the allegations contained in paragraphs XII, XIII, XIV, XV and XVI of plaintiff's complaint, and admits and alleges that on or about November 2, 1950, plaintiff was interrogated by two investigators of the Immigration and Naturalization Service and that the questions and answers during said interrogation were recorded on Dicta-



phone belts and that said Dictaphone belts were transcribed and the plaintiff did refuse to sign said transcription. Admits that a warrant of arrest dated October 11, 1951, was issued and served on plaintiff, and that said warrant of arrest required [13] that a hearing to enable plaintiff to show cause why she should not be deported in conformity with law should be held, and gave notice to said plaintiff that grounds upon which it was alleged she should be deported were under the Act of October 16, 1918, as amended, in that plaintiff had been, prior to entry, a member of the following class set forth in Section 1 of said Act; an alien who was a member of the Communist Party of the United States. A copy of said warrant of arrest is attached hereto, marked Exhibit C. Admits that on or about October 24, 1951, a hearing based on said warrant of arrest was held by Hearing Officer Bert F. Kearney at which plaintiff was present and represented by her counsel John P. Tobin, that a certified copy of said Immigration and Naturalization proceeding is in evidence as "Exhibit B" in the said above-referred-to habeas corpus action, No. 15648-C, and this Court will be asked to transfer all the records, files, pleadings, proceedings, exhibits and transcripts of record in said matter, including said Immigration and Naturalization File, to the instant action, in conformity with the opinion of the United States Court of Appeals for the Ninth Circuit in Action No. 14786 on appeal, said opinion being dated November 12, 1956.

## X.

Denies the allegations contained in paragraphs XVII, XVIII and XIX of plaintiff's complaint except admits that an order of deportation as to the plaintiff was issued by said Immigration and Naturalization Service on or about March 30, 1953, and that said order was affirmed by the Board of Immigration Appeals and became a final deportation order on or about June 12, 1953. Alleges that it appears from the allegations contained in paragraph XVII, and on the face of the present complaint, that there has been a prior habeas corpus proceeding in which the order of deportation was reviewed by this Court in Action No. 15648-C and that said action [14] was affirmed by the Court of Appeals for the Ninth Circuit in Appeal No. 13974, and it is impossible to determine from the allegations in paragraph XVII of the complaint whether or not plaintiff claims that in said prior habeas corpus action a decision of the District Court, as affirmed by the Court of Appeals for the Ninth Circuit, was a denial of due process, but if so it would appear to be a contempt of the Court of Appeals decision in said prior Action No. 13974 on appeal.

## XI.

Neither admits nor denies the allegations contained in paragraph XX of plaintiff's complaint, the same appearing to be in the nature of a prayer for review of a deportation order and an injunction; alleges that there is no need for a restraining order or injunction, as this Court well knows no attempt

to deport plaintiff will be made during the pendency of any court proceeding.

For a Further, Second, Separate and Affirmative Defense, Defendant Alleges:

I.

That the fictitious defendants, John Doe and Richard Roe, are improper and unnecessary party defendants and should be dismissed from the action.

For a Further, Third, Separate and Affirmative Defense, Defendant Alleges:

I.

That this Court has previously reviewed the order of deportation as to the plaintiff, which became final on or about June 12, 1953, in a habeas corpus action, No. 15648-C, and that the decision that said order of deportation was valid is res judicata in the present proceeding and this action should therefore be dismissed. [15]

For a Further, Fourth, Separate and Affirmative Defense, Defendant Alleges:

I.

That the complaint fails to state a claim upon which relief can be granted.

For a Fifth, Separate and Affirmative Defense, Defendant Alleges:

I.

That the Court lacks jurisdiction of any action for a trial de novo, as distinguished from review of

said final deportation order, as to the issue of plaintiff's deportability as an alien who, prior to entry, was a Communist.

Wherefore, plaintiff prays that this Court enter a judgment dismissing plaintiff's complaint on the grounds that the issues raised therein are *res judicata* because the same have previously been presented and tried in a petition for writ of habeas corpus in this Court on behalf of Halldora Kristin Sigurdson in Action No. 15648-C; or in the alternative, that this Court review said final deportation order and hold the same valid and effective, and determine that the plaintiff is deportable pursuant to said final order of deportation; for costs of suit herein, and for such other and further relief as to the Court seems just.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant United States Attorney,  
Chief of Civil Division;

ARLINE MARTIN,  
Assistant United States Attorney;

/s/ ARLINE MARTIN,  
Attorneys for Defendant Albert Del Guercio. [16]

EXHIBIT A

In the United States District Court in and for the  
Southern District of California, Central Division

No. 15648-C

In the Matter of the Petition of:

HALLDORA KRISTIN SIGURDSON, for Writ  
of Habeas Corpus.

HALLDORA KRISTIN SIGURDSON,

Petitioner,

vs.

H. R. LANDON, ALBERT DEL GUERCIO,  
HENRY GRATTAN, and DOE ONE to DOE  
FIVE, Inclusive,

Respondents.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled matter came on regularly for hearing on an order to show cause why a writ of habeas corpus should not issue on July 13, 14, and 15, 1953, in the above-entitled Court before the Honorable Dave W. Ling, the petitioner being present in court on July 13, 1953, and being represented by her attorney John P. Tobin, and the respondents by its attorneys Walter S. Binns, United States Attorney, Clyde C. Downing and Walter M. Lehman, Assist-



ant United States Attorneys, appearing by Walter M. Lehman, [17] and the Court, having considered the pleading and oral and documentary evidence adduced, and having heard arguments of counsel, and having been submitted the complete administrative file of the Immigration and Naturalization Service containing the transcript of the administrative hearing of the petitioner and the exhibits introduced therein, and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

### Findings of Fact

#### I.

That on or about March 30, 1953, by authority of the Attorney General, a warrant of deportation directing the deportation of Petitioner Halldora Kristin Sigurdson was issued.

#### II.

That the issuance of said warrant was based upon deportation proceedings, in which hearing was given the alien petitioner commencing on October 24, 1951, and continuing thereafter until concluded.

#### III.

That the warrant of deportation issued March 30, 1953, by authority of the Attorney General, directs that the alien be deported on the ground that she has been, prior to entry, a member of the Communist

Party of the United States, and therefore, deportable under the Act of October 16, 1918, as amended.

IV.

That the Immigration and Naturalization Service that conducted said hearing had jurisdiction to act.

V.

That the petitioner had notice of the hearing, produced witnesses in her own behalf, and had opportunity to show that she did not come within the classification of aliens whose deportation Congress has directed. [18]

VI.

That there were no procedural irregularities at said hearing.

VII.

That said administrative hearing was fair.

VIII.

That there was substantial evidence to support the warrant of deportation.

Conclusions of Law

I.

That the petitioner is deportable under the Act of October 16, 1918, as amended, and Section 19 of the Immigration Act of 1917, as amended, in that petitioner, after administrative hearing, was found to be an alien who had been, prior to entry, a mem-

ber of the Communist Party of the United States, and who by warrant of deportation issued March 30, 1953, by authority of the Attorney General, was ordered deported on said ground.

## II.

That the Immigration and Naturalization Service that conducted the hearing of October 24, 1951, had jurisdiction to act, that the hearing was fair, that none of the constitutional rights were abridged or violated, and that there is substantial evidence to support the order of deportation.

## III.

That the detention of the petitioner by H. R. Landon, District Director, Immigration and Naturalization Service, Department of Justice, Los Angeles, California, for purposes of deportation, is lawful and proper.

Dated this 28th day of July, 1953.

/s/ DAVE W. LING,  
United States District Judge.

Lodged: July 22, 1953.

Filed: July 28, 1953. [19]



EXHIBIT B

In the United States District Court in and for the  
Southern District of California, Central Division

No. 15648-C

In the Matter of the Petition of:

HALLDORA KRISTIN SIGURDSON, for Writ  
of Habeas Corpus.

HALLDORA KRISTIN SIGURDSON,

Petitioner,

vs.

H. R. LANDON, ALBERT DEL GUERCIO,  
HENRY GRATAN, and DOE ONE to DOE  
FIVE, Inclusive,

Respondents.

JUDGMENT

The above-entitled matter came on regularly for hearing on an order to show cause why a writ of habeas corpus should not issue on July 13, 14 and 15, 1953, in the above-entitled Court before the Honorable Dave W. Ling, the petitioner being present in court on July 13, 1953, and being represented by her Attorney John P. Tobin, and the respondents by its attorneys, Walter S. Binns, United States Attorney; Clyde C. Downing and Walter M. Lehman, Assistant United States Attorneys; appearing by Walter M. Lehman, [21] and the Court, having consid-

ered the pleadings and oral and documentary evidence adduced, and having heard arguments of counsel, and having been submitted the complete administrative file of the Immigration and Naturalization Service containing the transcript of the administrative hearing of the petitioner and the exhibits introduced therein, and being fully advised in the premises, and the Court having heretofore made and filed its Findings of Fact and Conclusions of Law, and having ordered that a judgment be entered in accordance therewith;

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That the petition of Halldora Kristin Sigurdson for a writ of habeas corpus be, and the same is, hereby denied and the order to show cause be, and the same is, hereby discharged.

Dated this 28th day of July, 1953.

/s/ DAVE W. LING,

United States District Judge.

Approved as to form, pursuant to Local Rule 7(a), this . . . . day of July, 1953.

.....,

JOHN P. TOBIN,

Attorney for Petitioner.

Lodged: July 22, 1953.

Filed: July 28, 1953.

Docketed and entered July 28, 1953. [22]

EXHIBIT C

WARRANT FOR ARREST OF ALIEN

United States of America, Department  
of Justice, Washington

No. A 7 759 254

To District Enforcement Officer, Los Angeles, California, or to Any Immigrant Inspector in the Service of the United States.

Whereas, from evidence submitted to me, it appears that the alien, Halldora Kristin Sigurdson, who entered this country at San Ysidro, California, on July, 1949, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of October 16, 1918, as amended, in that she has been, prior to entry, a member of following class, set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant her a hearing to enable her to show why she should not be deported in conformity with law. The expenses [23] of detention, hereunder, if necessary,

are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1952."

The Alien May Be Released From Custody Pending Determination of Deportability Under Bond in the Amount of \$2,000.00 or on Conditional Parole If Satisfied That He Will Appear When Wanted and That He Will Conform to the Conditions of a Parole Agreement.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 10th day of October, 1951.

H. R. LANDON.

[On reverse side.]

Port of Los Angeles, California

Date: October 11, 1951

Warrant of Arrest of  
Halldora Kristin Sigurdson

Served by me at Compton, California, on October 11, 1951, at 9:50 a.m. Alien was then informed as to cause of arrest, the conditions of release as provided therein, advised as to right of counsel and furnished with a copy of this warrant.

/s/ FRANCIS W. WROBLEWSKI,  
Investigator.

Witness:

/s/ MILTON B. BELL,  
Investigator.

Affidavit of Service by Mail acknowledged.

[Endorsed]: Filed February 12, 1957. [24]

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[Title of District Court and Cause.]

NOTICE OF, AND MOTION FOR, ORDER OF  
COURT TRANSFERRING TO THIS AC-  
TION THE RECORD, FINDINGS, JUDG-  
MENT AND PROCEEDINGS IN HABEAS  
CORPUS ACTION IN THIS COURT, IN  
THE MATTER OF HALLDORA KRISTIN  
SIGURDSON, NO. 15648-C, AND FOR DIS-  
MISSAL OF FICTITIOUS DEFENDANTS  
JOHN DOE AND RICHARD ROE

Comes now the defendant, Albert Del Guercio,  
and moves this Court as follows:

I.

Moves to dismiss from the action herein the ficti-  
tious defendants, John Doe and Richard Roe, as im-  
proper and unnecessary party defendants.

II.

Moves the Court for an order transferring to this  
action and into the record of this Court all of the  
matters in an action in this Court for a petition for  
habeas corpus, In the Matter of Halldora Kristin

Sigurdson, being No. 15648-C, as follows: All of the pleadings, files and records, transcript of hearings of July 13, 14 and 15, 1953, before the Honorable Dave W. Ling, [26] Judge presiding, and all of respondent's exhibits, to wit:

Exhibit A and

Exhibit B, being certified transcripts of the Immigration and Naturalization Proceedings re deportation order.

Exhibit C, the dictaphone belts.

Exhibit D, copy of June 12, 1953, decision of the Board of Immigration Appeals.

This motion is based upon the records and files in the present action, upon the mandate of the Court of Appeals spread in this action on December 21, 1956, and upon the decision of the Court of Appeals for the Ninth Circuit, No. 14786, dated November 12, 1956, in which decision it was stated, at page 5 thereof, as follows:

“Since the dismissal was for lack of jurisdiction, and since the record, findings and judgment of the District Court in the previous habeas corpus proceedings are not presently before us, we do not reach the question of whether full consideration of the record of a hearing by the Immigration and Naturalization Service in a habeas corpus proceeding precludes subsequent review of the substantiality of the same evidence on a petition for declaratory judgment.



The majority of a panel of this Court has so held in effect.<sup>12</sup> Therefore, this Court reverses the judgment dismissing the complaint for want of jurisdiction and remands the cause for further proceedings." [27]

Dated: February 12, 1957.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant United States Attorney, Chief of Civil  
Division;

ARLINE MARTIN,  
Assistant United States At-  
torney;

.....  
ARLINE MARTIN,  
Attorneys for Defendant Al-  
bert Del Guercio.

## NOTICE OF MOTION

To Plaintiff, Halldora Kristin Sigurdson, and John  
P. Tobin, Her Attorney:

You and Each of You Will Please Take Notice  
that defendant, Albert Del Guercio, will bring on  
for hearing the above motion in the above-entitled  
action before the Honorable William M. Byrne, Dis-  
trict Judge, in the captioned court in the United

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<sup>12</sup>Crain vs. Boyd, 9 Cir., No. 14633, August 4, 1956.

States District Courtroom of Judge Byrne, Second Floor, Federal Building, 312 North Spring Street, Los Angeles, California, on Monday, March 25, 1957, at 10 o'clock a.m. of that day, or as soon thereafter as counsel can be heard.

Dated: February 12, 1957.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant United States Attorney, Chief of Civil  
Division;

ARLINE MARTIN,  
Assistant United States At-  
torney;

/s/ ARLINE MARTIN,  
Attorneys for Defendant Al-  
bert Del Guercio.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 12, 1957. [28]

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[Title of District Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT  
OF OBJECTIONS TO MOTION OF THE  
DEFENDANT DEL GUERCIO

Motion to Dismiss Fictitious Defendants Premature

It is submitted that the proper time to dismiss  
fictitious defendants is at the trial of the above-



described matter. The nature of the action is not against any individual as such, be it Del Guercio or any other occupant of the office he holds, but is directed in fact as against the Immigration and Naturalization Service. The law demands, and plaintiff follows it, that the action be directed as done. Plaintiff has the legal right to be protected with the fictitious names until trial. Del Guercio may be transferred or resign. It is submitted that this plaintiff has the legal right to then serve the successor of Del Guercio without depending upon an Order of substitution of said successor as defendant.

The authorities cited in *Sigurdson vs. Del Guercio*, 9th Cir. (Nov. 12, 1956), . . . . Fed. (2nd) . . . ., in connection with the use of fictitious defendants are not in point with instant matter. The cases [30] therein cited refer to attempts to obtain federal jurisdiction under the diversity rule in personal injury matters. In one instant, the fictitious defendants were dismissed by the trial court just prior to the matter being given to jury; the other, trial court dismissed as fictitious defendants sua sponte.

Moreover, fictitious defendants, as such, were discussed in the *Sigurdson vs. Del Guercio*, supra, matter because of a motion heretofore filed by said defendant regarding indispensable parties. It is submitted that the question of who is an indispensable party is no longer pregnant. Nowhere in the aforesaid appeal or in the cases cited is there any reference to Tenure of Office by Del Guercio. Besides, as Judge Fee so lucidly states in the citations

in Sigurdson vs. Del Guercio, *supra*, the plaintiffs did not give any indication whom the fictitious defendants might be. We do in our complaint. We cannot give names but we refer to the job. To dismiss the fictitious defendants at this stage of the proceedings could conceivably injure the rights of plaintiff and possibly deny her the opportunity to prove conclusively her innocence of the charge filed against her by the Immigration and Naturalization Service.

Motion Transferring to This Action Certain Parts  
of the Record in the Said Habeas Corpus Matter  
Said motion is premature.

The proper time to introduce evidence is at the trial of a matter. Under the pretrial procedure followed by this Court, a stipulation is all that is needed to get the full and complete record of the immigration proceedings and the habeas corpus proceedings.

If defendant was so anxious to have same, he could have made it an exhibit in his answer and adopted it by reference. This Court takes judicial cognizance of the records of this court.

Crain vs. Boyd, 237 Fed. (2nd) 927 cited by defendant in his motion is to be distinguished from instant matter as ably set forth by Judge Fee in Sigurdson vs. Del Guercio, *supra*. Plaintiff has [31] contended before the Circuit Court (9) the same position as adopted by the opinion in chief in the

Crain vs. Boyd, supra, matter. The concurring opinion of Judge Stephens in the Sigurdson vs. Del Guercio states with definity that he feels that habeas corpus scope has not been expanded to that of declaratory relief and that he is writing an opinion on said point to be filed.

While plaintiff does not regard Crain vs. Boyd as binding upon her, its persuasive force may be lessened by the opinion of Judge Stephens when it is filed. It is possible that there may be a conflict of decision on the point between two panels of said Circuit Court.

Dated: February 18, 1957.

Respectfully submitted,

/s/ JOHN P. TOBIN,

Attorney for Plaintiff.

Affidavit of service by mail acknowledged.

[Endorsed]: Filed February 19, 1957. [32]

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[Title of District Court and Cause.]

OBJECTIONS TO POINTS SET FORTH IN  
MOTION OF DEFENDANT DEL GUERCIO

Defendant's Point I

That motion to dismiss defendants named in above numbered and described complaint under fictitious names is premature.

## Defendant's Point II

The motion for an order "transferring to this action and into the record of this Court—" of the habeas corpus proceedings as set forth in said motion of defendant is premature, incomplete and an effort to withhold from the record the failure on the part of the respondent in the habeas corpus matter to comply with an Order made and issued by the above-described Court, said Order being in writing and later made orally in open court.

Dated: February 18, 1957.

/s/ JOHN P. TOBIN,  
Attorney for Plaintiff.

Affidavit of Service by mail attached.

[Endorsed]: Filed February 19, 1957. [34]

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[Title of District Court and Cause.]

MINUTES OF THE COURT  
MARCH 25, 1957

Present: Hon. Wm. M. Byrne, District Judge.  
Counsel for Plaintiff: John P. Tobin.  
Counsel for Defendant: Arline Martin.

Proceedings:

Hearing: on motion of defendant for order of court transferring to this action the record, findings, judgment and proceedings in Habeas Corpus action in this court, in the matter of Halldora Kris-

tin Sigurdson, No. 15648-C, and for dismissal of fictitious defendants John Doe and Richard Roe.

Attorney Martin argues motion on behalf of defendant. Attorney Tobin argues to court on behalf of plaintiff. Court will permit plaintiff to file amended complaint under Title 5, U.S.C., Section 1009, and complaint is amended by interlineation on stipulation of both parties.

It Is Ordered that both motions be granted and cause is set for trial at 9:45 a.m., May 14, 1957.

Counsel for plaintiff to file a complete memorandum prior to April 17, 1957, and government counsel to have to May 1, 1957, in which to reply. Attorney Arline Martin to prepare order.

JOHN A. CHILDRESS,  
Clerk.

By /s/ C. A. SEITZ,  
Deputy Clerk. [36]

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[Title of District Court and Cause.]

ORDER GRANTING MOTION TO TRANSFER  
TO THIS ACTION THE RECORDS AND  
ENTIRE PROCEEDINGS IN THE MAT-  
TER OF HALLDORA KRISTIN SIGURD-  
SON, No. 156483, AND DISMISSING FIC-  
TITIOUS DEFENDANTS

The defendant's "Motion for Order of Court  
Transferring to This Action the Record, Findings,



Judgment and Proceedings in Habeas Corpus Action in This Court, In the Matter of Halldora Kristin Sigurdson, No. 15648-C, and for Dismissal of Fictitious Defendants John Doe and Richard Roe'' having come on for hearing before the Honorable William M. Byrne, Judge presiding, the plaintiff appearing by her attorney of record, John P. Tobin, and defendants appearing by Laughlin E. Waters, United States Attorney; Richard A. Lavine and Arline Martin, Assistants United States Attorney, and the matter having been argued orally, and the plaintiff having filed a written memorandum of points and authorities in support of objections to said motion, and the Court being fully advised in the matter, [37]

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that there be transferred to this action and into the record of this Court all of the matters in the action entitled "In the Matter of Halldora Kristin Sigurdson," being No. 15648-C, as follows: All of the pleadings, files and records, transcript of hearings, including the hearing on Tuesday, June 30, 1953, and the hearings on July 13, 14 and 15, 1953, and all of the exhibits identified or in evidence;

It Is Further Ordered, Adjudged and Decreed that the fictitious defendants, John Doe and Richard Roe, be and the same are hereby dismissed from the action.

Dated: April 9, 1957.

/s/ WM. M. BYRNE,

United States District Judge.

Affidavit of Service by Mail acknowledged.

Lodged March 28, 1957.

[Endorsed]: Filed April 9, 1957.

Docketed and entered April 11, 1957. [38]

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[Title of District Court and Cause.]

CIVIL SUBPOENA TO PRODUCE A  
DOCUMENT OR OBJECT

To: Albert Del Guercio, or Officer in Charge of the  
Los Angeles Office of the Immigration and  
Naturalization Service.

You Are Hereby Commanded to appear in the  
United States District Court for the Southern Dis-  
trict of California, at Postoffice and Courthouse in  
the city of Los Angeles, on the 14th day of May, 1957,  
at 9:45 o'clock a.m. to testify on behalf of Plain-  
tiff in the above-entitled action and bring with you

1. All Dictaphone belts used at preliminary  
hearing of above plaintiff on Nov. 2, 1950. This  
means whether submitted at hearing or withheld  
from hearing on her deportation warrant.

2. All alleged original transcripts of alleged  
statement made from Dictaphone belts em-



ployed at said Nov. 2, 1950, hearing of aforesaid; your specific attention is directed to alleged original transcripts (three [3] in number) presented to plaintiff in 1950 for her signature.

3. Statement under oath filed with I & N on Nov. 20, 1950, by pl. May 8, 1957.

JOHN A. CHILDRESS,  
Clerk;

By E. THOMPSON,  
Deputy Clerk.

JOHN P. TOBIN,  
Attorney for Plaintiff. [40]

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[Title of District Court and Cause.]

MINUTES OF THE COURT—MAY 14, 1957

Present: Hon. Wm. M. Byrne, District Judge.

Counsel for Plaintiff: John P Tobin.

Counsel for Defendant: Arline Martin,  
Assistant U. S. Attorney.

Proceedings: For Court trial.

Court convenes herein at 9:50 a.m., and counsel for both sides and plaintiff being present, Court orders trial proceed.

Gov't Ex. A is marked for ident. and admitted into evidence.

Albert Del Guercio, defendant, is called by plaintiff, and is sworn and testifies.

Plf's Ex. 1 and 2 are marked for ident. only.

Bert F. Kearney and Thomas J. Nolan, respectively, are called by plaintiff and are sworn and testify.

Attorney Tobin makes offer of proof as to testimony of the following witnesses heretofore subpoenaed: Philip F. Habell and Oral K. Chandler.

Gov't Ex. B is marked for ident. only.

Bert F. Kearney resumes the stand.

At 11:05 a.m. court recesses. At 11:15 a.m. court reconvenes herein, and all being present as before, trial proceeds.

Thomas J. Nolan, heretofore sworn, resumes the stand.

Attorney Tobin makes offer of proof as to testimony which would be given by Mr. Barnhill of the Dictaphone Co.

Oral Kenneth Chandler is called by plaintiff, and is sworn and testifies.

At 12:05 p.m. court recesses to 2 p.m. At 2:05 p.m. court reconvenes herein, and all being present as before, court orders trial proceed.

Philip F. Habell is called by plaintiff, and is sworn and testifies.

Halldora Kristin Sigurdson is called, sworn, and testifies in her own behalf.

Attorney Tobin makes offer of proof as to dictaphone belts handled by Mr. Habell and Mr. Chandler.

Plaintiff rests.

Gov't Ex. C is marked for ident. only.

The Court takes the matter under submission and orders counsel to file briefs, plaintiff to file opening

brief within fifteen days, defendant to file answering brief fifteen days thereafter, and plaintiff to file closing brief five days after filing of defendant's answering brief.

JOHN A. CHILDRESS,  
Clerk;

By /s/ C. A. SEITZ,  
Deputy Clerk.

WB-5/14/57. [41]

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[Title of District Court and Cause.]

### MEMORANDUM OF DECISION

Sigurdson, a native and national of Canada, first came to the United States in 1944. In July, 1949, she took a vacation in Mexico. On October 10, 1951, a warrant was issued for her arrest for deportation, it being charged that prior to her re-entry, following the vacation in Mexico, she had been a member of, or affiliated with, the Communist Party of the United States, and hence that she was subject to deportation pursuant to the provisions of the Internal Security Act of 1950, Ch. 1024, 81st Cong., 2nd Session, 64 Stat. 987, 1006.

Administrative hearings upon the warrant were commenced October 24, 1951, and continued from time to time thereafter and concluded on February 20, 1952. At such hearings the plaintiff was present and represented by counsel. The hearing officer made findings and a decision that plaintiff was a volun-

tary member of the Communist Party of the United States for a period of time during the years 1946-1947, concluded that she was subject to deportation and recommended that she be ordered deported. His findings and decision were approved and adopted by the appropriate officer of the Immigration and Naturalization Service, and plaintiff's appeal [42] therefrom was dismissed by the Board of Immigration Appeals on March 19, 1953. A final warrant or order of deportation issued March 30, 1953.

Plaintiff filed a petition for a writ of habeas corpus seeking judicial review of the deportation proceedings. The District Court reviewed the administrative proceedings and dismissed the petition upon the merits. The Court of Appeals affirmed, *Sigurdson v. Landon*, 215 F. 2d 791 (CA 9). The Supreme Court denied certiorari, 348 U. S. 916; rehearing denied 348 U. S. 956.

In this action for declaratory relief the plaintiff seeks a second judicial review of the same administrative proceeding. Undaunted by the judgment of the District Court, the affirmance of the Court of Appeals and the denial of certiorari by the Supreme Court, she asks this Court to proclaim that those tribunals were in error.<sup>1</sup> [43]

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<sup>1</sup>The following colloquy took place at the hearing:  
"The Court: \* \* \* This is all matter that was in the habeas corpus proceeding, was it not?

"Mr. Tobin: Yes.

"The Court: And, as a matter of fact, the Court of Appeals went all through this, including the

The Ninth Circuit decision in *Leonard Cruz Sanchez v. Robinson*, . . . F. 2d . . . , decided June 15, 1957, is dispositive of this case. See also *Tora Upstead Rystad v. John P. Boyd*, . . . F. 2d . . . (CA 9), decided June 21, 1957. An alien may not have a redetermination of issues adjudicated in a previous judicial review. Judicial review of an administrative proceeding may be had either by habeas Corpus or an action for declaratory relief, *Shaughnessy v. Pedreiro*, 349 U. S. 48, 75 S. Ct. 591, 594, but Congress did not intend successive judicial reviews of the same administrative action with the resultant anomalous situation of having a District Court determine whether the prior decision of a Court of Appeals should be set aside as erroneous.

This Court granted a motion of the defendant "transferring to this Action, the Record, Findings, Judgment and Proceedings in Habeas Corpus Action, In the Matter of Halldora Kristin Sigurdson, No. 15648-C." The Court finds that the administrative proceedings which plaintiff asks this Court to review are the identical proceedings reviewed by the Court in Habeas Corpus action No. 15648-C, which judgment was affirmed by the Court of Appeals (215

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clicks, and so forth, and discussed the question of the clicks. All this was presented to the Court of Appeals. Is that not true?

"Mr. Tobin: Yes. And they erred on the point.

"The Court: And you want me to overrule the Court of Appeals, is that correct? You want me to decide this differently than the Court of Appeals decided it, is that what you seek?

"Mr. Tobin: Yes, your Honor."



F. 2d 791) and concludes as a matter of law that said judgment precludes a second judicial review of the same administrative action.

The findings of fact and conclusions of law appearing in this Memorandum of Decision shall serve the purpose stated in Rule 52 Federal Rules of Civil Procedure. A formal judgment shall be entered accordingly.

Dated: July 26, 1957.

/s/ WM. M. BYRNE,

United States District Judge.

[Endorsed]: Filed July 26, 1957. [44]

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United States District Court, Southern District  
of California, Central Division

No. 18,089-WB

HALLDORA KRISTIN SIGURDSON,

Plaintiff,

vs.

ALBERT DEL GUERCIO,

Defendant.

### JUDGMENT

The above cause having come on for trial on May 14, 1957, before the Honorable Wm. M. Byrne, plaintiff appearing by her attorney, John P. Tobin, and defendant appearing by Laughlin E. Waters,

United States Attorney, and Arline Martin, Assistant United States Attorney; and the certified transcript of the Immigration and Naturalization proceedings having been introduced in evidence as Exhibit A, and all of the record, findings, judgment and proceedings in habeas corpus action In the Matter of Halldora Kristin Sigurdson, No. 15648-C, being before the Court pursuant to its order, and the matter having been argued orally and upon written memoranda, and the Court having heretofore filed its memorandum of decision including findings of fact and conclusions of law,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the relief prayed for by the plaintiff is denied with costs to the defendant in the sum of \$20 as and for a docket fee pursuant to 28 U. S. C. 1923.

Dated: July 26, 1957.

/s/ WM. M. BYRNE,

United States District Judge.

[Endorsed]: Filed and entered July 26, [45] 1957.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Halldora Kristin Sigurdson, plaintiff in the above-described action, ap-



peals to the United States Court of Appeals for the Ninth Circuit from:

1. The Judgment made and signed on July 26, 1957, and the whole thereof.
2. Denial of relief prayed for in the complaint for declaratory relief and injunction.

Dated at Los Angeles this 21st day of August, 1957.

/s/ JOHN P. TOBIN,  
Attorney for Plaintiff.

Affidavit of Service by Mail acknowledged.

[Endorsed]: Filed August 22, 1957. [46]

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[Title of District Court and Cause.]

### STATEMENT OF POINTS ON APPEAL

Briefly stated, the points of appeal are:

1. The administrative Order of Deportation constituted an abuse of discretion; contrary to law and regulations; and a denial of due process of law; and
2. The administrative deportation hearing of plaintiff was unfair; and
3. Judgment of trial court is contrary to law.

/s/ JOHN P. TOBIN,  
Attorney for Plaintiff.

Affidavit of Service by Mail acknowledged.

[Endorsed]: Filed August 22, 1957. [49]

In the United States District Court, Southern  
District of California, Central Division

No. 18,089-WB Civil

HALLDORA KRISTIN SIGURDSON,

Plaintiff,

vs.

ALBERT DEL GUERCIO,

Defendant.

Honorable William M. Byrne, Judge presiding.

REPORTER'S TRANSCRIPT  
OF PROCEEDINGS

Appearances:

For the Plaintiff:

JOHN P. TOBIN, ESQ.

For the Defendant:

LAUGHLIN E. WATERS,

United States Attorney; by

ARLINE MARTIN,

Assistant United States Attorney.

Tuesday, May 14, 1957—9:45 A.M.

The Court: Call the calendar.

The Clerk: No. 18,089-WB Civil Halldora Kristin Sigurdson vs. Albert Del Guercio, for court trial.

Miss Martin: Ready for the government.

Mr. Tobin: Ready for the plaintiff, your Honor.

The Court: You may proceed.

Perhaps, first, before you start, so there will be no question, as I understand it, the Complaint was amended, inserting the grounds of jurisdiction?

Mr. Tobin: Yes. That was done on March 25th, your Honor; and also the John Does stricken.

The Court: What is that?

Mr. Tobin: Also the John Does stricken.

The Court: Yes.

You may proceed.

Mr. Tobin: If the court please, I was told before your Honor came on the bench that Mr. Del Guercio, upon whom we served a subpoena duces tecum, had recently suffered a cardiac, and for that reason they asked us if we would put him on the stand first.

With the court's permission, I don't think it will be necessary to put him on the stand just to ask him if he brought the records, and at this time mark them for identification, [3\*] because I wouldn't want to subject anybody to any strain.

Miss Martin: Mr. Del Guercio has consulted his doctor, and he is here in response to the subpoena and he is willing to be put on the stand, and we don't choose to go along with Mr. Tobin's suggestion.

If he wants to call him to the witness stand, that is fine. We want to have the record so that we can make our formal objections.

The Court: Is there any dispute as to the record? It is an unusual situation to bring in the Director.

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**\*Page numbering appearing at top of page of original Reporter's Transcript of Record.**

Mr. Tobin: To get certain records that were under his care and control.

The Court: Ordinarily, counsel bring the records into court.

Mr. Tobin: These records have never been produced in court, your Honor, and I wanted them before your Honor so that your Honor would have the complete record before the court.

I might say this subpoena asks for: "All Dictaphone belts used at preliminary hearing of above plaintiff on November 2, 1950. This means whether submitted at hearing or withheld from hearing on her deportation warrant."

The Court: At any rate, we would perhaps save time if you put Mr. Del Guercio on the stand and asked him. All I am [4] stating is that ordinarily in this type of case counsel brings in the record.

Miss Martin: In that regard, your Honor, we have already an order bringing into this court the file in the previous habeas corpus proceeding, and I would like to suggest that we now mark as an exhibit in this case the immigration proceedings and make them identified in this case. They were Exhibit B in the previous habeas corpus action, and I think that it would be advisable for us to mark that file as an exhibit in this proceeding. Whether it should be plaintiff's or defendant's is immaterial, so I will ask the clerk to mark for identification a certified copy of the immigration file relating to the proceedings in the deportation of this plaintiff, which was identified as Exhibit B in the prior action No. 15648.

The Court: Very well. It will be received.

The Clerk: Government's Exhibit A.

Mr. Tobin: For identification?

The Court: It was offered in evidence. It will be received in evidence. You surely haven't any objection to that?

Mr. Tobin: Yes, I do, your Honor, on the ground that it is not complete, and for that reason I do object to it.

At this time I make the offer of proof that I will show that there are certain Dictaphone belts missing from this record. [5]

The Court: You will get a chance to make your offer of proof, but, Mr. Tobin, you come into this court seeking a judicial review, you ask this court to review the action of the administrative body; how can I review it unless the record is before me?

Mr. Tobin: That's right, your Honor. But in order that there may be fairness to the government and to the plaintiff, the only way that the court can intelligently and accurately review it is by having the complete record before it.

The Court: That is offered as the record. You are not questioning that that is not the record?

Mr. Tobin: I am questioning that that is the complete record. I am admitting that insofar as it goes it is the record.

The Court: I see. In other words, it is your position that there is something in addition to that?

Mr. Tobin: Yes, your Honor.

The Court: Very well. That of course would be



no ground for not admitting this, as long as it is even a part of the record.

It will be admitted.

(The exhibit referred to was received in evidence and marked as Defendant's Exhibit A.)

### ALBERT DEL GUERCIO

called as a witness by the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Give us your full name.

The Witness: Albert Del Guercio.

### Direct Examination

By Mr. Tobin:

Q. Mr. Del Guercio, did you bring the documents that were named in the subpoena duces tecum served upon you?

Miss Martin: I will object to the question, your Honor, as ambiguous, relating to all of the documents, and ask counsel if he will refer to the documents one by one so that we may make our proper objections for the record.

The Court: Sustained.

Q. (By Mr. Tobin): Mr. Del Guercio, did you bring with you all of the Dictaphone belts used at the preliminary hearing of Miss Sigurdson on November 2, 1950? And this means whether they were submitted at hearing or withheld from hearing.

A. No, I did not, for the reason that they are not in my possession.

(Testimony of Albert Del Guercio.)

Q. In whose possession are they?

A. In possession of the court. They were made, as I am told, a part of an exhibit in this case by an order of the [7] court dated April 9, 1957, and I was shown the record here just this morning, and I see that the belts relating to this date, November 2, 1950, are in that record. There are eight belts, five in one envelope and three in another.

Q. Yes. Are those eight belts that you say are in court the only Dictaphone belts that your office has of that November 2nd hearing?

A. I don't know that of my own knowledge, but I caused a search to be made of the record, and I was told that they are the only records of the November 2, 1950, hearing.

Q. How about the transcripts of the preliminary hearing of November 2, 1950, did you bring them with you?

A. I did not for the reason that I do not have them in my possession. I am told, however, that they are also a part of the Immigration record that was introduced in this case as a government's exhibit, and by order entered April 9, 1957.

Q. Mr. Del Guercio, I don't want to prolong this, but the government record that your office furnished in the original habeas corpus proceeding had one transcript, is that not true?

A. Yes, one original transcript.

Q. The transcript that was introduced at the hearing?

A. Yes, sir.



(Testimony of Albert Del Guercio.)

Q. Do you know about the other transcripts that were prepared from those belts prior thereto? [8]

A. No, I do not.

Q. Do you know whether there were any other transcripts prepared?

A. Not of my own knowledge, but I am told that there were, and I have brought with me, at the suggestion of Miss Martin, copies of transcripts of the hearings had on November 2, 1950.

Q. Do you have them in the court room?

A. Yes, sir.

Mr. Tobin: May I see them, Miss Martin?

Q. (By Mr. Tobin): Is this the same as the transcript that was introduced at the hearing as Exhibit 7, part of Exhibit B, now Exhibit A?

A. I have no personal knowledge of that.

Mr. Tobin: May we ask that this be marked for identification at this time, your Honor?

The Court: Yes.

The Clerk: Do you wish that as Plaintiff's Exhibit 1?

Mr. Tobin: As Plaintiff's No. 1.

Miss Martin: May we identify it in the record as a carbon copy with some ink notations on it of a hearing dated—of matter pertaining to the date of November 2, 1950?

The Clerk: Is this admitted, your Honor?

The Court: No. It is marked for identification.

Mr. Tobin: Marked for identification at this time. [9]

(Testimony of Albert Del Guercio.)

(The exhibit referred to was marked as Plaintiff's Exhibit No. 1 for identification.)

Q. (By Mr. Tobin): How about a statement that was filed with your office by Miss Sigurdson on November 20th; do you have that, Mr. Del Guercio?

A. Yes, I do.

Mr. Tobin: May I have that, please?

Miss Martin: We want to object, your Honor, to producing any statement bearing the date of—what was the date?

Mr. Tobin: November 20, 1950.

Miss Martin (Continuing): —November 20, 1950, as not a part of the record in this case, and not a part of any hearing. In other words, an improper part of the record. It is irrelevant and immaterial.

We do have the statement here, in response to the subpoena, but we want to object to producing it on the grounds that it is immaterial to the record.

Mr. Tobin: May I be heard?

The Court: No.

You produce it and mark it for identification. You make your objection at the time of it being offered in evidence, if it is offered in evidence.

The Clerk: Plaintiff's Exhibit 2 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 2 for [10] identification.)

(Testimony of Albert Del Guercio.)

Mr. Tobin: We have no further questions of Mr. Del Guercio, and I wish you a speedy recovery, Mr. Del Guercio. Miss Sigurdson joins me.

Miss Martin: We have no questions, Mr. Del Guercio.

The Court: You may step down. Thank you, Mr. Del Guercio.

The Witness: Thank you, sir.

Mr. Tobin: Mr. Kearney, will you please take the stand.

Miss Martin: May Mr. Del Guercio be excused, your Honor?

The Court: Yes, he may be excused.

### BERT KEARNEY

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and give us your full name, please.

The Witness: Bert F. Kearney.

### Direct Examination

By Mr. Tobin:

Q. Mr. Kearney, what is your business, profession, or occupation?

A. I am an Immigration officer.

Q. Directing your attention to 1951, particularly the month of October, did you have occasion to preside at a deportation [11] hearing of the plaintiff herein, Halldora Sigurdson?

(Testimony of Bert Kearney.)

Miss Martin: I object to the question, your Honor, on the ground it is incompetent, irrelevant and immaterial; that this is a hearing for a review of a record, and this appears to be an attempt to go outside of the record, and any testimony of Mr. Kearney is not properly a part of this hearing.

The Court: What is the purpose?

Mr. Tobin: This is just a preliminary, your Honor. We are now going to show and establish that the decision of Mr. Kearney is an unfair decision, unwarranted by the facts adduced at the hearing, and we are also going to show through Mr. Kearney that the belts which are before this court, particularly those five belts, the other three have no pertinency and they are not the ones that were introduced, and I will prove that with Mr. Kearney, that they were spurious evidence, and that the decision of this hearing officer was a fraud, and that it did not conform to the facts, and it was misleading, and this hearing officer is guilty of misfeasance, malfeasance, and nonfeasance of office.

The Court: The objection is sustained.

Mr. Tobin: All right.

Q. Now, Mr. Kearney, how many times during the hearing did you take judicial notice that the Dictaphone belts would show a click when played at the hearing?

Miss Martin: I object on the same grounds, your Honor, [12] and on the additional ground that the Dictaphone belts themselves are the best evidence.

The Court: The objection is sustained.

(Testimony of Bert Kearney.)

Mr. Tobin: May I be heard, your Honor?

The Court: Counsel, let me say this to you. This is all matter that was in the habeas corpus proceeding, was it not?

Mr. Tobin: Yes.

The Court: And, as a matter of fact, the Court of Appeals went all through this, including the clicks and so forth, and discussed the question of the clicks. All this was presented to the Court of Appeals. Is that not true?

Mr. Tobin: Yes. And they erred on the point.

The Court: And you want me to overrule the Court of Appeals, is that correct? You want me to decide this differently than the Court of Appeals decided it, is that what you seek?

Mr. Tobin: Yes, your Honor.

The Court: I have no power to overrule the Court of Appeals. The Court of Appeals has ruled on this question, and I have no power to overrule them.

Mr. Tobin: May I respectfully submit that the decision of the Court of Appeals is upon a judgment that is void on its face; that the judgment in the habeas corpus action is based upon findings of substantial evidence, which is not in conformity with 242(b)4 or 8 USC 1254(a)4. And I respectfully [13] submit that under Marcello the judgment is void on its face.

The Court: Mr. Tobin, assuming that everything you say is correct, assuming that they made a mistake, that they were in error, and assuming that the



(Testimony of Bert Kearney.)

Supreme Court when they denied certiorari also made a mistake and should have granted certiorari in this case, I still do not have the power to reverse the Court of Appeals.

Mr. Tobin: But I am not asking the court to reverse——

The Court: You are. You just got through saying that you are.

Mr. Tobin: What I am saying is, I am asking the court to rule differently under the state of facts that I am going to present here. I submit that the doctrine of the law of the case doesn't apply here.

The Court: The objection is sustained.

Mr. Tobin: Very well.

Q. Mr. Kearney, did you hear that Dictaphone—those Dictaphone belts played?

Miss Martin: I object; incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. (By Mr. Tobin): Mr. Kearney, how many Dictaphone belts were handed to you by Tom Nolan at the hearing of Miss Sigurdson? [14]

Miss Martin: Same objection.

The Court: The same ruling. And this entire line of questioning is included within the ruling.

Mr. Tobin: Yes, your Honor.

No further questions at this time, under the court's ruling.

The Court: You may step down.

The Witness: Thank you.

Miss Martin: May Mr. Kearney be excused, your Honor?

The Court: Yes, he may be excused.

Mr. Tobin: Call Mr. Nolan.

### THOMAS J. NOLAN

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and give us your full name, please.

The Witness: Thomas J. Nolan.

Mr. Tobin: May we identify the witness for the record, your Honor?

The Court: Yes, go ahead.

### Direct Examination

By Mr. Tobin:

Q. Mr. Nolan, you are an Immigration officer, and during [15] the deportation hearing of Miss Sigurdson in 1951 and 1952 you were the examining officer?

A. Yes, to both of your questions, counsel.

Q. Mr. Nolan, during the course of that deportation hearing did you hand to Bert F. Kearney eight Dictaphone belts as the Dictaphone belts of the November 2nd hearing?

Miss Martin: I object on the ground it is incompetent, irrelevant and immaterial, and improper, not a part of the record of this proceeding. This is not a de novo hearing.



(Testimony of Thomas J. Nolan.)

Mr. Tobin: At this time, your Honor, I refer the court to page 107 of the transcript of the hearing, wherein it will show that this witness counted in open hearing——

The Court: Counsel, the objection is sustained. With the further statement that you can't try this case twice. Even if it wasn't part of the record. The only purpose of admitting the record here in this case is to show it is the same record. And, of course, it is your statement that it is the same. You have made the statement that it is the same record.

Mr. Tobin: Insofar as it goes, yes.

The Court: I have already stated to counsel we are bound by the judgment in the prior case.

Mr. Tobin: May I assume, then, for the purpose of the record, that any further questions addressed to the witness, Mr. Nolan, regarding his transferring to the hearing officer the belts, that we will have the same ruling? [16]

The Court: Yes.

Mr. Tobin: That's all.

The Court: Why don't you make an offer of proof?

You may step down.

Why don't you make an offer of proof, if you are going to call some more witnesses for this same purpose?

Mr. Tobin: Okay.

At this time, your Honor, were the witnesses, Mr. Chandler and Mr. Habell—at this time I make the offer of proof that these men were the two investi-

gating officers who conducted the preliminary hearing on November 2nd; that I make the offer of proof that at conferences on November 8th or 10th, and on the 14th, that Mr. Habell in the presence of Mr. Chandler presented to the plaintiff and her counsel three different transcripts of the preliminary hearing.

I further make the offer of proof that Mr. Chandler would testify that at the time of the first conference in their office with Miss Sigurdson and myself as her attorney, and these two men, that he would say that Mr. Habell played a short portion of the Dictaphone belt, and that that did not correspond with the transcript that they were asking us to sign without any interlineation, amendments, or corrections.

I further make the offer of proof that Mr. Habell will deny this.

I now add that the testimony of Mr. Habell and Mr. [17] Chandler grouped together will show that Miss Sigurdson was in this room where they had the hearing room, Room 227, at the office of the Immigration Service, from shortly after 1:00 o'clock until approximately a quarter to 5:00; that of this statement, which is Exhibit 7 of the original Exhibit B, now Exhibit A, that Mr. Habell asked the questions on the first approximately 10 pages, Mr. Chandler took over for a short while, not beyond page 13, and that Mr. Habell continued again until approximately page 29, and that Mr. Chandler took over and finished the statement up to page 38, with one additional page of verification.

I make the offer of proof that both these men would testify that it was an extremely hot day; that Mr. Habell would admit that all the windows were closed, that he closed them; that Chandler would deny this, saying that there was one window partly open; that both of them will deny having used psychological force or intimidation or pressure; that both of them will admit that the machine when stopped, and I am now referring to a Dictaphone machine of the type and operation of the style that was used in 1950, put out by the Dictaphone Corporation, would show a click each time that it was stopped; that both of these men would so testify.

Further, that I will show that these men were present in the hearing room, that they heard the Dictaphone played, and on the statement of the hearing officer Kearney, which does [18] not appear in the record, there was but one stop, and that was on page 17 of this statement, following the question—I don't recall the exact words, but it had to do with the John Reed Club, and there was a click there, and there was a possibility of another click. That was the statement of Mr. Kearney, the hearing officer. That does not appear on the record. And these men, I respectfully submit and offer to prove, would so testify.

I now ask that a ruling be made upon that type of testimony.

Miss Martin: As nearly as I can tell from the offer of proof, your Honor, we would object that all of it is incompetent, irrelevant and immaterial, as matter either already contained in the Immigration

record and gone into there, and a review of that file is the only thing before this court, and also as matter already covered in the previous habeas corpus trial and therefore res judicata by the decision of the Court of Appeals which fully covers it all.

We do not mean our objection to run here this morning to any question with regard to the completeness of the record. We make our objection on all those other grounds.

The Court: Objection sustained.

Mr. Tobin: Then insofar as the completeness of the record, may I ask that the witnesses be put on for that purpose, your Honor? [19]

The Court: In what sense, counsel? What do you mean completeness of the record?

Mr. Tobin: The completeness of the record is this, your Honor: That there were eight belts presented at the hearing by Mr. Nolan——

The Court: When you say "the hearing," are you referring now——

Mr. Tobin: To the Immigration hearing before Mr. Kearney. Mr. Nolan was not present at the preliminary hearing. When I refer to the hearing of November 2nd, I refer to that, if I may, as the preliminary hearing.

If the court please, it is our position that never to this day has there been presented to this court or to any court the eight Dictaphone belts that were presented by Mr. Nolan, the examining officer, to Mr. Kearney, and which he counted in the presence of everybody in that hearing, one by one. That at the time of the habeas corpus proceeding we secured an



order to show cause to produce all of the Dictaphone belts. That they came into court with five belts, and later when commanded to do so by Judge Carter of this court, three additional belts were included. And as I have pointed out in my trial memo, one of those belts was a belt taken of some statement made by me or while I was discussing this matter subsequent to the hearing.

Now, I respectfully submit, your Honor, any belt taken [20] subsequent to the hearing cannot be included within the eight belts which should be a part of that hearing.

I have given the book and page on that in my trial memo where that was the statement of the United States Attorney at that time. When we have a statement by the examining officer that there are eight belts and more belts used, I respectfully submit that the court is entitled, and it cannot make a hearing unless it has the original eight belts.

The Court: Now, let me straighten you out on this.

There are eight belts here——

Mr. Tobin: That's right.

The Court: Is it your contention that there are some belts in addition to the eight belts?

Mr. Tobin: It is my contention that the belts here are not the original belts, period. It is my contention that until we have the eight belts presented by Mr. Nolan to Mr. Kearney this court will not be able to give a fair decision.

The Court: I am going to give you an opportunity, if there are some belts—all I want to get

straightened out is if you contend that there are some additional belts, then of course I want those belts presented here. Not to be put into evidence, because there isn't anything going into evidence in this case that was not in evidence in the habeas corpus case. However, you may present them and have them marked for identification so you will have that record before the Court of Appeals. [21]

In other words, I want to give you an opportunity to have everything before the Court of Appeals. The only thing is that something that was not before the court in the previous action may not be before this court in determining this question, so it will be merely marked for identification.

In short, Mr. Tobin, in the first place this is a judicial review, and in a judicial review the court reviews the record, the selfsame record that was before the Immigration authorities, and determines the question on matters that were before the Immigration authorities.

In this particular case there has already been a judicial review on a habeas corpus proceeding, and the District Court there reviewed the Immigration proceeding and then the Court of Appeals reviewed the findings and judgment of the District Court, and the Supreme Court then reviewed that, or at least considered it, and denied certiorari. So I can't change that record that was in the habeas corpus proceeding, and as I have already indicated to you, the fact that you have had one judicial review bars a second judicial review. However, I realize, because you have just told me, that you contend that the



District Court and the Court of Appeals in the other proceeding committed error, and that you expect me to correct that error. I realize that that is your position, and you expect me to make a new record, so I do not want to deprive you of having a [22] complete record before the Court of Appeals on it, and therefore if you have additional records, you may have them marked for identification.

If you think there is a witness here that has additional records, you may call him, if that is what you have in mind, and ask him.

There are eight records here now.

Mr. Tobin: That's right.

The Court: And you spoke of eight.

Are all eight of these records—were they in evidence in the habeas corpus proceeding?

Mr. Tobin: I think the last three were marked for identification. I don't recall whether they were put into evidence. But in either event they were before the court.

Miss Martin: I would like to suggest at this time, your Honor, that the government would like to have marked for identification in this action what was Exhibit C in the previous habeas corpus action, 15648, an envelope which contains three Dictaphone belts.

The Court: Were those in evidence in the other case?

The Clerk: Apparently they were not, your Honor. They only seem to be marked.

Mr. Tobin: I think they were marked for identification only.

Miss Martin: Pardon me just one moment.

The Court: They will be marked for identification in [23] this proceeding, then.

I call the court's attention to the fact that in Exhibit A in evidence here there is attached thereto something called Exhibit 7, which is a folder which contains five Dictaphone belts.

The Court: Are those in evidence?

Miss Martin: They were in evidence in the certified transcript of the Immigration hearing in the habeas corpus case, and they are in evidence here now as part of Exhibit A.

The Court: This entire record is in evidence, so that puts—how many are there in there?

Mr. Tobin: Five.

The Court: Those five are in evidence.

These three are marked for identification.

Mr. Tobin: Yes.

The Court: Do you contend there are some more?

Mr. Tobin: What I contend is that the statement of Mr. Tom Nolan on page 107 of the record before this court was that at that particular date, which I think was October 24, 1951—I may be wrong on that—or it might have been in November of '51, he counted right up before everybody in that hearing room eight Dictaphone belts, in response to the question by Mr. Kearney, the hearing officer, if he had the belts. Then when it was decided to play those belts to determine [24] whether they were the original belts, or whether the statement, Exhibit 7, Exhibit A in this action, was the real McCoy, those eight belts were handed to Mr. Kearney by Mr. Nolan.

Now, the court has precluded me from finding that out from Mr. Kearney and from Mr. Nolan——

The Court: I just got through telling you that I have not.

Mr. Tobin: I had him on the stand.

Miss Martin: You didn't ask him that kind of question.

The Court: You may ask Mr. Kearney if he has any additional belts, and you may ask anyone else if they have any additional belts. I just got through telling you that if they were not before the court in the other proceeding, they may not be in this proceeding, but they may be marked for identification. I have repeated that three or four times, if that isn't clear.

The Clerk: Your Honor, before proceeding further, these have not been identified as plaintiff's or respondent's——

Miss Martin: Government's B.

The Clerk: Government's Exhibit B marked for identification.

(The exhibit referred to was marked as Government's Exhibit B for identification.)

Mr. Tobin: Mr. Kearney, will you please resume the [25] stand?

## BERT KEARNEY

recalled as a witness by and on behalf of the plaintiff, having been heretofore duly sworn, was examined and testified further as follows:

## Direct Examination

(Resumed)

By Mr. Tobin:

Q. Mr. Kearney, how many Dictaphone belts were you handed by Mr. Nolan at the deportation hearing?

Miss Martin: We object to the question unless it is made clear the date of the hearing so that we know exactly what hearing we are talking about.

Mr. Tobin: Page 107, if the court wants to refer to it.

Miss Martin: I also object to the question, your Honor, as incompetent, irrelevant and immaterial. It does not relate to the question of whether there are any additional belts.

The Court: The objection is sustained.

I told you, Mr. Tobin——

Mr. Tobin: Yes, your Honor. I am probably not coming into the right channel.

The Court: You aren't, no. And so as to get you on the right channel, I will explain to you, as I have heretofore explained to you, you may inquire of this witness if he has any additional belts, you may inquire of any other witness whether they have any additional belts. If you have any additional [26] belts, all you need do is present them here and mark them for identification.

(Testimony of Bert Kearney.)

Mr. Tobin: May I be heard, your Honor?

The Court: Yes.

Mr. Tobin: What I am trying to show, your Honor, is this: That they were ordered by Judge Carter to produce the eight belts of the hearing that were presented by Mr. Nolan to Mr. Kearney; that before Judge Carter they produced five, and later produced three more, one of which was taken subsequent to the hearing. Now, if your Honor please, that hearing terminated in February, 1952. If there were eight belts in either October or November, 1951, I want to know where those belts are. They were never in my possession. I never once had them. They were always in the possession of the government. I can't produce any belts. All I can do is go by this record that is here before this court. That is my position, your Honor.

I haven't got those belts. I never even knew Miss Sigurdson on November 2, 1950, never knew she existed.

The Court: I suggest, then, counsel, if I might repeat this once more.

Again, apparently, your concern is that there is a belt missing——

Mr. Tobin: Three.

The Court: Or three. Then ask him if he has the belts, [27] and ask him if he knows where they are, or if he knows whether there are any in existence.

I told you you might ask him that.

Q. (By Mr. Tobin): Mr. Kearney, do you have



(Testimony of Bert Kearney.)

the eight belts that were handed to you by Tom Nolan——

Miss Martin: I object to that question, your Honor, on this ground: That he has——

Mr. Tobin: I haven't finished, please.

Miss Martin: Pardon me.

Q. (By Mr. Tobin): Do you have the eight belts that were handed to you by Tom Nolan, in response to your question during the deportation hearing of Miss Sigurdson in October or November, 1951?

Miss Martin: I object to that question, your Honor, on the ground that it does not identify the the belts in this respect, and therefore it is incompetent, irrelevant and immaterial: There is——

The Court: The objection is sustained. And it is further sustained, counsel—if you would not insist on trying to answer your tricky questions——

Mr. Tobin: I am sorry, your Honor, if you say that is a tricky question. It is a fair question.

The Court: It isn't a fair question. And, as a matter of fact, it is objectionable on the ground it assumes facts not in evidence. [28]

Mr. Tobin: Page 107 of the record. I challenge the court on that.

The Court: There isn't any page 107 of the record of this proceeding.

Mr. Tobin: The record of the Immigration proceedings, your Honor.

The Court: Mr. Tobin, in this proceeding I told you that you might ask him whether or not he has



(Testimony of Bert Kearney.)

any of those records. Now, the proper method of doing what you have in mind, if you feel that he was handed some records, if he says he has no further records and he doesn't know where there are any records, then of course you would be permitted to ask him if Mr. Nolan on such a date handed him certain records, and you would be permitted to ask him as to those records——

Mr. Tobin: All right.

The Court: ——and not ask him a question as to what did you do with the records that were handed to you by Mr. Nolan.

There isn't anything in these proceedings to show anything was handed to him by Mr. Nolan.

Miss Martin: May I say one thing that I think will help clarify it?

There has been identified in this record a November 2, 1950, statement of Miss Sigurdson, which has nothing to do with the hearing, it is just an ex parte statement, not in a formal hearing at all. I believe counsel when he is referring [29] to the eight belts which have now been identified in Government's Exhibit A, and Exhibit B, is referring to belts which were a transcript of some statement given by Miss Sigurdson prior to any hearing. Now, of course when formal hearings began, there were records made of those hearings, and all I would like counsel to do, when he is referring to belts, is to indicate whether he is questioning belts that pertained to the November 2, 1950, statement of Miss Sigurdson, or whether he is referring to formal hearings.

(Testimony of Bert Kearney.)

He calls everthing a hearing, so I would like to have it clear just what he is referring to when he asks the question.

Q. (By Mr. Tobin): Mr. Kearney, do you have any of the belts of the November 2, 1950, hearing in your possession?

Miss Martin: I object to that question on the ground that I don't believe there is a November 2, 1950, hearing.

Mr. Tobin: Preliminary hearing.

Isn't that what it is called?

The Witness: Mr. Tobin, I have no belts in my possession.

Miss Martin: Just a moment.

There is no November 2, 1950, hearing. There was a November 2, 1950, statement prior to the beginning of a formal hearing. If he means "statement," let him say "statement," but let's not have an ambiguity here in this record.

Mr. Tobin: If the court please, I understand that the parlance of the Immigration Service is to call that a preliminary [30] hearing or a preliminary examination. In either event, the record shows clearly what I have in mind by "November 2 hearing."

The Court: Say what you have in mind, then.

Q. (By Mr. Tobin): Do you have any of the belts of the November 2, 1950, preliminary examination of Miss Sigurdson by investigators Habell and Chandler? A. No.

Q. How many belts were there, Mr. Kearney?

(Testimony of Bert Kearney.)

A. How many belts—do you mean of the hearing?

Q. Yes.

Miss Martin: Just a moment. I am going to object unless you make it clear whether you mean how many belts were there at the hearing or how many belts were there of this November 2, 1950, statement.

Mr. Tobin: I am confining myself to the November 2, 1950, preliminary hearing or preliminary examination.

The Witness: I believe there were five.

Q. (By Mr. Tobin): You believe there were five?

A. If you are referring to Miss Sigurdson's statement that was made a part of the record.

Q. I am referring to the belts of the November 2, 1950, hearing. I am not referring to the statement.

A. Was that the hearing that was before me that you are referring to? [31]

Q. Certainly.

A. I don't know how many belts there were.

Miss Martin: Now, your Honor, it appears from the questions that they have been ambiguous. I was trying to get him to clarify whether he was referring to a preliminary statement or the formal hearing before Mr. Kearney.

It is quite obvious that he has been talking about both things at once.

Mr. Tobin: At no time have I been talking about

(Testimony of Bert Kearney.)

the belts before Mr. Kearney. They have never been, to my knowledge, before the court. Counsel is entirely astride from the record on that, your Honor.

The Court: Read the last couple of questions back there.

(The record was read by the reporter.)

The Court: How am I to understand that? The witness asks, "Do you mean the hearing before me?" And you say "Certainly." Then you say "At no time have I been talking about the belts before Mr. Kearney."

Will you straighten that out for me?

Mr. Tobin: Yes. It is very simple, your Honor. Maybe it is because of my familiarity of seven years with this case.

There were no belts—there was a Dictaphone machine employed at the hearing, the deportation hearing before Mr. Kearney, but the belts of that, to my knowledge, have never been before this court or any other court. The only belts of [32] any hearing, and I am now referring to the November 2, 1950, preliminary hearing, were the only belts ever introduced at the deportation hearing before Mr. Kearney, and they are allegedly the belts, according to the government, produced and certified to this court.

Now, I respectfully submit, your Honor, at no time have I been talking of any belts, nor is there any capability of any ambiguity, because the only belts mentioned anywhere in the long history of this

(Testimony of Bert Kearney.)

case are the belts of the November 2, 1950, preliminary hearing.

The Court: Before Mr. Kearney?

Mr. Tobin: And none were introduced before Mr. Kearney. That was not—in 1950 there was no Complaint, and the preliminary examination or hearing was conducted by Mr. Chandler and Mr. Habell.

Miss Martin (To Mr. Tobin): May I ask a question?

You are not saying that the belts which contain the matter of the hearing before Mr. Kearney are involved?

Mr. Tobin: Oh, no.

Miss Martin: So the belts that you are saying were introduced at the hearing before Mr. Kearney were belts that related to the November 2, 1950, statement?

Mr. Tobin: That's right. That has been my position right along.

Miss Martin: And you are not interested in having brought [33] to you the belts which were the belts created at the hearing before Mr. Kearney?

Mr. Tobin: No.

The Court: Do you understand that now?

The Witness: Yes, your Honor, I do.

The Court: He is referring apparently to some belts that were made at the time a preliminary statement was taken, and those belts subsequently were introduced in evidence at the hearing over which you presided.



(Testimony of Bert Kearney.)

That is right, isn't it?

Mr. Tobin: Yes.

The Court: All right. Go ahead.

Q. (By Mr. Tobin): How many belts were you handed by Mr. Nolan? A. Eight.

Q. And that was——

The Court: That was at this hearing presided over by Mr.—when you say handed to him, do you mean presented in evidence?

Mr. Tobin: Handed from one hand—from the hand of Mr. Nolan to the hand of Mr. Kearney.

The Court: Were they presented in evidence?

Mr. Tobin: They were attached to an exhibit. Yes, they were made part of Exhibit 7.

The Court: Okay. [34]

The Witness: There were five, your Honor——

Q. (By Mr. Tobin): And there were——

The Court: Don't you testify. Ask him.

The Witness: It was in the latter part of 1951 or the early part of '52. I don't recollect the date.

The Court: Ask him how many there were.

Q. (By Mr. Tobin): How many did you attach to Exhibit 7 of the deportation hearing record?

The Witness: Your Honor, could I explain my answer?

The Court: You may answer it and then explain your answer.

The Witness: There were five attached to Exhibit 7.

Q. (By Mr. Tobin): And what did you do with the other three, Mr. Kearney?



(Testimony of Bert Kearney.)

A. I believe, to my recollection, they were put in the file.

Q. So the record will be complete now on this, you said it was in the latter part of '51 or early '52. I have before me a copy of the transcript, and on the bottom of each page is given the date, and on page 107 of this transcript it bears the inscription 10-24-51, and that is substantially correct, October 24, '51?

A. I believe so.

Q. Yes.

Have those other three belts been certified to this court [35] at any time?

A. I don't know.

Q. You were present in Judge Carter's court on the same floor as this court, on June 30, 1953, were you not, in response to a subpoena by the petitioner in that habeas corpus proceeding?

A. Yes.

Q. At that time, Mr. Kearney, did you not hear me complain to Judge Carter that the respondent in that petition for habeas corpus did not comply with the order to show cause in that he did not present the eight belts which the court had ordered him to produce?

Miss Martin: I will object to the question on the ground it is incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. (By Mr. Tobin): All right.

Now, during the course of that proceeding on June 30, 1951, Mr. Kearney, did you or did you not hand to the United States Attorney who was handling the case then three additional belts?

Miss Martin: I object to that as incompetent,

(Testimony of Bert Kearney.)

irrelevant and immaterial, and the record is the best evidence of what occurred in any court proceeding.

Mr. Tobin: What I am trying to do, your Honor, is establish the spuriousness of those belts. [36]

The Court: The what?

Mr. Tobin: The spuriousness of those belts. That is what I am trying to do. We contend right along that this is spurious evidence.

The Court: The objection is sustained.

As I got through telling you, I understand that you contended that there were additional belts.

Mr. Tobin: Yes, yes.

The Court: As far as the belts that were before the court before, it is not for me to go into that evidence, any of that evidence, and pass upon it, whether it be belts or testimony. The only reason that I am permitting this, as I indicated before, is if there are some additional belts, which you seem to think there are some additional belts, I want to give you an opportunity to get those belts and mark them for identification.

Q. (By Mr. Tobin): Mr. Kearney, were you told on October 24, 1951, by Mr. Nolan that he had eight belts, but there were more belts used?

Miss Martin: I object to that question, your Honor, on the ground it is irrelevant and immaterial.

The Court: Sustained.

Mr. Tobin: I am trying to establish, your Honor, and bring out the facts that there were more belts.

(Testimony of Bert Kearney.)

At no time did this plaintiff ever have them in her possession. [37]

The Court: The objection is sustained.

He just got through saying that he hasn't the belts and he doesn't know of any other belts.

Q. (By Mr. Tobin): Mr. Kearney, I ask you to look at page 107 of the transcript of the deportation hearing and ask you read from that portion which says, "Counsel Tobin to Examining Officer," down to where it again says "Counsel Tobin to Witness Chandler"—read that, please, just to yourself and see if that refreshes your recollection.

Miss Martin: Your Honor, I am going to object to any questions upon the ground that this transcript does not relate to anything in which Mr. Kearney was either questioning or answering. These are questions and answers by someone not a witness on the stand, so this is not proper impeachment, and I object to any further questions.

The Court: The important thing is not the question of impeachment, the important thing is it couldn't refresh his recollection if it is not his statement.

Mr. Tobin: It does happen to be in response to his question, your Honor, and I only identified it on that page——

The Court: I understood her to say no.

Miss Martin: It is my understanding that it is not Mr. Kearney's questions. I may be in error.

The Court: Has he finished reading the question

(Testimony of Bert Kearney.)

or the questions and answers that you asked him to? [38]

The Witness: Yes, I have, your Honor.

The Court: All right. Now you may ask him the question.

Q. (By Mr. Tobin): Does that refresh your recollection?

The Court: Just a moment.

There is nothing before me, so I don't even know what you are talking about, and I can't rule on it.

In order for it to be before me, if you will read the questions and answers, and then ask the witness whether it refreshes his recollection, at that time you may make your objection.

Q. (By Mr. Tobin): "Q. And I believe you testified—you stated, Mr. Nolan"—

The Court: Question by whom?

Mr. Tobin: Counsel Tobin to Examining Officer.

"Q. And I believe"—

Miss Martin: Pardon me a moment.

Is he being allowed to read from this record, which so far has not been identified as being any questions or answers given by the witness Mr. Kearney?

These are questions propounded by Mr. Tobin.

The Court: You have misrepresented to the court, Mr. Tobin.

Mr. Tobin: It is my understanding that it is Mr. Kearney, and it is my understanding that Mr. Kearney did ask Mr. Nolan. It does not so appear here on the record. [39]

(Testimony of Bert Kearney.)

The Court: Then the objection is sustained.

Q. (By Mr. Tobin): Do you have any knowledge that there were more belts used at that preliminary hearing in 1950, Mr. Kearney?

A. No.

Q. And you were presented eight, all right.

Miss Martin: I object to that and move to strike counsel's last statement as not being a correct statement of what Mr. Kearney's testimony is, and move to strike his voluntary statement.

The Court: The motion to strike is granted.

Q. (By Mr. Tobin): All right.

How many belts were you presented by Mr. Nolan, Mr. Kearney?

Miss Martin: I object to that on the ground it has been asked and answered.

The Court: Overruled.

The Witness: Eight.

Mr. Tobin: That is all.

Mr. Nolan.

Miss Martin: I want to ask a question or two.

### Cross-Examination

By Miss Martin:

Q. At the time Mr. Nolan handed you the eight belts, do you [40] recall what he said with regard to the eight belts? A. No, I don't specifically.

Q. What did you do with the eight belts at that time?

A. Eight belts were presented. There had been offered in evidence a statement by Miss Sigurdson,



(Testimony of Bert Kearney.)

and there was some question about that statement——

Q. Don't tell me that. Just answer the questions. What did you do with the eight belts?

A. I played five of them back on the Dictaphone machine.

Mr. Tobin: I object to that as improper and incorrect, your Honor, and not a correct representation of page 107, to which the direct examination was predicated. The direct examination was predicated solely as to the number of belts.

If she wants to take him over for her witness at this time on that score, it is perfectly okay.

The Court: The objection is sustained.

Q. (By Miss Martin): Did you make any of those belts an exhibit in the hearing that was being held before you?

A. I attached them to Exhibit 7, according to my recollection.

Q. How many belts did you attach to Exhibit 7?

A. Five.

Q. What did you do with the other three?

A. I believe they were put in the file, the file jacket, that I had before me. [41]

Q. Is there any reason why you did not attach the other three to the Immigration file as an exhibit at that time?

A. Yes.

Q. What is the reason.

A. I played the five belts back that corresponded with the statement, and when those five belts had been played back and were found to be substantially



(Testimony of Bert Kearney.)

in conformity with the statement, I didn't play the other three because there was no necessity for it.

Miss Martin: No further questions, your Honor.

Redirect Examination

By Mr. Tobin:

Q. Have you ever played the other three belts, Mr. Kearney?      A. Never.

Q. You don't know what they refer to?

A. No, I don't.

Q. Mr. Kearney, when did you first learn that it only took five belts to make that statement?

A. At the hearing before me.

Q. At the hearing.

Did you know it only when those five belts were completely played, or did you know it beforehand?

A. At the time I played the belts back. [42]

Q. In other words, so there will be no confusion in the record, you did not know that the eight belts were required to play that statement when you started to play it on the Dictaphone machine?

Miss Martin: I object to that, your Honor, as incompetent, irrelevant and immaterial, and a leading question, and assuming a fact not in evidence.

The Court: Overruled.

It is really argumentative. I will permit that one question.

Mr. Tobin: It is preliminary, your Honor. I have two of them.

The Court: I will permit that one question. I am not going to permit you to go into this. You

(Testimony of Bert Kearney.)

may ask him that for the purpose of refreshing his recollection, if possible, as to what happened to the other belts.

The Witness: I have forgotten the question.

The Court: Read the question.

(Question read by reporter.)

The Witness: That is correct.

Q. (By Mr. Tobin): I now refer to page 145 of the transcript of the deportation hearing conducted before you, dated at the bottom 11-6-51, and ask you to read the statement by hearing officer. Will you please read that page there, page 145? [43]

Do you now wish to change your testimony, Mr. Kearney?

Miss Martin: I object to that question, your Honor, as incompetent, irrelevant and immaterial, and not proper impeachment, and assuming a fact not borne out by the record.

The Court: I assume that he is not attempting to impeach this witness, but what he is attempting to do is refresh his recollection.

Mr. Tobin: To refresh his recollection.

The Court: Again I must ask you to read the statement and ask him if it refreshes his recollection.

Mr. Tobin: Does that refresh your recollection, Mr. Kearney?

The Court: Will you read it, please? I can't rule on it unless I know what is in there.

Mr. Tobin: I am reading from page 145 of the deportation hearing of Miss Sigurdson conducted

(Testimony of Bert Kearney.)

before Mr. Kearney, the witness on the stand, dated 11-6-51.

“By Hearing Officer: For the purpose of the completion of the record, we have listened to the recording of the memo belts 1 and 2 of the transcript previously referred to. It is noted that we started on these belts at 10:55 a.m., and finished two belts at 11:55 a.m. Inasmuch as there are approximately two and one-half more belts and it is lunch time, I will declare a recess until 1:00 p.m.

“By Examining Officer: Mr. Hearing Officer, for the [44] purpose of the record, we are now on page 18, following the playback.

“By Hearing Officer: Is that understood?

“By Counsel: Yes.

“By Hearing Officer: All right: Hearing continued until 1:00 p.m.”

Does that have any tendency to cause you to refresh your recollection, Mr. Kearney?

A. It doesn't refresh my recollection any further than it was before.

Q. Then you knew on 11-6-51, before that statement Exhibit 7 in your deportation hearing was completed on the Dictaphone, you knew that it only took five belts to handle it, didn't you, Mr. Kearney? Isn't that what your statement is here?

A. It indicates that, yes.

Q. Well, if it indicates that, do you want to change it?

The Court: Counsel, don't argue with the witness. We have been here an hour doing nothing.

(Testimony of Bert Kearney.)

Q. (By Mr. Tobin): Do you wish to change your testimony?

Miss Martin: I object to the question, "Do you wish to change it."

He keeps inferring that Mr. Kearney has testified previously [45] to something different, and he has not.

The Court: The objection is sustained.

Mr. Tobin: That's all.

The Court: We will take a five-minute recess.

(Recess taken.)

The Court: You may proceed.

Mr. Tobin: Mr. Nolan, will you please take the stand?

### THOMAS J. NOLAN

recalled as a witness by and on behalf of the plaintiff, having been heretofore duly sworn, was examined and testified further as follows:

#### Direct Examination

(Resumed)

By Mr. Tobin:

Q. Mr. Nolan, how many belts did you hand the hearing officer Kearney on October 24, 1951, as the belts of the preliminary hearing of Miss Sigurdson on November 2, 1950? A. As I recall, five.

Q. You handed five belts?

A. As I recall, I had eight in my hand—in other words, if I may explain—

Q. Yes, I would like to hear this.

(Testimony of Thomas J. Nolan.)

A. A request was made for the belts. I had the file. I took from the file all of the belts contained therein, eight in number. I took the eight belts in my hand, and as I [46] recall, in substance, told Mr. Kearney as the presiding officer that five of them related to the statement. In other words——

Q. When did you tell him that, Mr. Nolan?

A. As I recall, at that time. However, I have no absolute recollection.

Q. Did you tell him that during the hearing, in open hearing, or did you tell him subsequently at another time?

A. I do not recall except to the best of my recollection it was at that time.

Q. I now ask you to take a look at page 107——

Miss Martin: Just a moment. Pardon me.

Are you using the exhibit in court?

Mr. Tobin: No. This is my copy of the transcript, and I presume it is the same. It was furnished to me by the government.

Miss Martin: I think we should use the court exhibit, if you please. We happen to have it here and we will give it to you. I don't think we should be examining from——

The Court: Isn't it the same thing?

Miss Martin: I don't know, your Honor. He has it in his possession. How do I know?

Mr. Tobin: It was furnished to me by the government, your Honor, and I signed a receipt for it.

The Court: I assume, again, that he is going to ask him [47] with reference to a statement that he



(Testimony of Thomas J. Nolan.)

previously made for the purpose of refreshing his recollection.

Mr. Tobin: That's right.

The Court: In order to refresh his recollection, it is going to be necessary for him to read it. When he does, you can follow it in your copy.

Q. (By Mr. Tobin): I ask you to read from a copy of the transcript of the deportation hearing of Miss Sigurdson dated 10-24-51, on page 107, from the portion approximately a third down from the top where it says "Counsel Tobin to Examining Officer," down to where it says "Counsel Tobin to Witness Chandler."

Will you please read that, Mr. Nolan.

The Court: Wait a minute now.

Mr. Tobin: It is his statement, your Honor.

The Court: I understood you to say "read down to where it says "Counsel Tobin to Chandler." This witness' name is not Chandler.

Mr. Tobin: I am pointing out the area which I want him to read, from "Counsel Tobin to Examining Officer." I don't want him to read that other part.

The Court: You are referring only to his testimony?

Mr. Tobin: Only to his statement, your Honor, yes.

"Counsel Tobin to Examining Officer:

"Q. And I believe you testified—you stated, Mr. [48] Nolan, that you have the belts?

"A. I have.



(Testimony of Thomas J. Nolan.)

“Q. How many belts were there?

“(Examining Officer counts belts.)

“A. There are one, two, three, four—four complete belts; two approximately half belts; and there are two other belts combined which would make about one belt, so actually that would make six or five and—now there were more belts than that were used.”

Does that refresh your recollection as to what you stated on October 24, 1951, Mr. Nolan?

The Witness: Not entirely, counsel.

Q. (By Mr. Tobin): It doesn't. But you did so count the belts at the hearing?

A. I apparently did at that time. However, may I add this? That the statement, or rather, the record of hearing taken out of context that you just gave me does not completely refresh my mind as to the actual proceedings. I do not know now the time covered, inasmuch as you, I believe, covered this particular point on more than one occasion.

Q. I now hand you, Mr. Nolan, the complete transcript consisting of two volumes and cover, and then a third volume furnished me by the Immigration Service, and see whether that is taken out of context, or will you please point out to the court where there is any different statement from you in the [49] entire deportation proceedings on that score.

Miss Martin: Now, your Honor, I am going to

(Testimony of Thomas J. Nolan.)

have to object to him using his own records in this instance.

The Court: The objection is sustained.

In addition to that, I am not going to have him reading the entire record.

His counsel will have an opportunity if there is any other part of the record that relates to this matter.

Mr. Tobin: All right.

Q. Now, is there any other part of this record which relates to the number of belts used by Chandler and Habell on November 2nd at the 1950 preliminary hearing?

A. I do not know, counsel. I have not read this record for many years. In fact, I have not read it since the time that I presented it on behalf of the government.

Miss Martin: And I object to the question, your Honor, that the record is the best evidence of what it relates to.

The Court: The objection is overruled this time, because the answer is in and he has stated what is quite obvious, that he wouldn't know, and it is a voluminous record.

Q. (By Mr. Tobin): Mr. Nolan, do you recall a request being made at the deportation hearing of Miss Sigurdson to the Hearing Officer for permission to take those Dictaphone belts, five which were used to make the transcript Exhibit 7, plus the other three belts, to the Dictaphone Corporation for examination? [50]

(Testimony of Thomas J. Nolan.)

Miss Martin: I object, your Honor, unless it is indicated the date of the hearing to which he is referring.

The Court: The objection is sustained.

Mr. Tobin: I am trying to find it.

The Court: And besides it is immaterial.

Q. (By Mr. Tobin): As a matter of fact, Mr. Nolan——

The Court: You are not contending that Miss Sigurdson took those belts, are you?

Mr. Tobin: No.

The Court: Then I think it is immaterial. I think the thing we are interested in is trying to find the belts.

Q. (By Mr. Tobin): Do you know where those other three belts are, Mr. Nolan?

A. I don't know what has happened to them since I last had them.

Q. And the last time you had them was October 24, 1951, was it?

A. Was that the date of the hearing?

Q. That was the date that you handed them to Mr. Kearney.

A. That is the last time I recall seeing them, the last time we were in a session where we were involved and I was connected. I do not recall the exact dates.

Mr. Tobin: That is all. [51]

Miss Martin: Just one question.

(Testimony of Thomas J. Nolan.)

Cross-Examination

By Miss Martin:

Q. At that time the three belts were in the file in the Sigurdson matter, is that correct?

A. That is correct.

Q. And they remained there to the best of your knowledge?

A. To the best of my knowledge, they did.

Mr. Tobin: I object to that, if your Honor please, as assuming a fact not in evidence.

Q. (By Miss Martin): Were they ever taken out of the file as far as you know?

A. During the period of time that I had the file in my possession I may have had them physically in my hands. I do know what they contained. I know what the eight belts covered.

Q. The last time you saw those records, had you returned them to the Sigurdson file?

A. I had.

Mr. Tobin: Did I understand you to say that the last time you had those eight belts you returned them to the Sigurdson file?

The Witness: Three.

Miss Matrín: My question pertained to the three belts, [52] the remaining three belts which were not identified in evidence. My questions are ambiguous. I am sorry.

Mr. Tobin: Can I hear the record read?

The Court: Straighten it out now. Ask your question over again.

(Testimony of Thomas J. Nolan.)

Q. (By Miss Martin): Referring to the three belts not identified as an exhibit at the hearing, the last time you saw those three belts, did they remain in the Sigurdson file in the Immigration Service?

A. Yes, they did.

The Court: All right.

You may step down.

Mr. Tobin: May I ask him a question?

### Redirect Examination

By Mr. Tobin:

Q. Did you have control of that file until it was delivered to court? A. No, I did not.

Q. Who had control of it, Mr. Nolan?

A. The file was in my possession for review prior to the hearing, during the course of the hearing, and upon the completion of the hearing when the government had rested, as well as yourself, the file was then—it then left me and remained within the Immigration office. In whose custody it was [53] other than Mr. Del Guercio, I do not know, but I no longer had possession. I had possession of the file prior to the hearing, I reviewed the eight belts, I know what was contained in those belts, I know when the material was gathered for those belts.

Q. Was that material gathered on November 2, 1950? A. A portion of it.

Q. Was there anything in those three belts subsequent to November 2nd and prior to October 24, 1951? A. Yes.



(Testimony of Thomas J. Nolan.)

Q. There was. And was that a statement of Miss Sigurdson?

A. No, it was not. The five belts related to Miss Sigurdson. The other belts, one of them related to you, a statement which you made at your request, as I recall. The other two were part, or at least a portion of the three related to the investigative stage of the proceeding that consisted of a statement by a witness who later appeared and testified in the hearing on behalf of the government.

Q. Not that it matters, but you said that you have a belt of a statement made by me prior to the hearing at my request?

A. As I recall, it was at your request.

Q. Could you be in error?

A. No, I don't believe so. [54]

Q. I suggest that you hear them again, Mr. Nolan. I now once again hand you 107—may we read it together——

Miss Martin: Are you referring to page 107 of Exhibit A?

Mr. Tobin: The same page that we heretofore referred to.

Miss Martin: In Exhibit A?

Mr. Tobin: In Exhibit A.

Q. This statement about the belts referred specifically, concisely, definitely, and exclusively to this statement of November 2nd, did it not?

Miss Martin: I object, your Honor, on the ground that it is an ambiguous question and it is leading and improper.



(Testimony of Thomas J. Nolan.)

The Court: Sustained.

You are not reading from that exhibit now?

Mr. Tobin: No.

The Court: Sustained.

Q. (By Mr. Tobin): Mr. Nolan, in order that the record will be absolutely certain and there will be no question, the examining officer is equivalent to the attorney for the government in a deportation hearing; is that right?

A. That is correct.

Q. Page 107 had to do—the portion that you heretofore read—had to do with the testimony of Mr. Chandler, did it not?

A. If you say it did. [55]

Q. You have no definite recollection about it?

A. No, I have not.

Q. All right.

Then, take a look at it, please, and I want you to take a look at page 106 and see if all of the discussions there, the questions of counsel to Mr. Chandler, refer to November 2nd. The same pertains to the top of page 107, the three questions and answers. And then when you do that, Mr. Nolan, will you then please tell us whether or not your statement as to eight belts, and that there were more used, didn't refer exclusively and only to the November 2nd, 1950, preliminary examination. Please look at the record.

Miss Martin: I object to the question, your Honor, on several grounds. First, it assumes a fact not in evidence when it states that Mr. Nolan's

(Testimony of Thomas J. Nolan.)

statement is that there were more than eight belts; and, in addition, it refers to testimony or questions and answers which are not questions and answers by Mr. Nolan. In that respect the record speaks for itself and it is an improper question and is immaterial.

The Court: And very ambiguous.

Miss Martin: And ambiguous.

Mr. Tobin: May I be heard on that, your Honor?

The Court: Yes.

Mr. Tobin: The statement that Mr. Nolan read, and which I read into the record, specifically and very concisely says [56] that there were eight belts and more belts used that day.

I am not using the exact language. The Court heard it and the witness has it before him.

Miss Martin: The record speaks for itself in that regard, your Honor. This is a matter of argument. I don't so interpret it.

Mr. Tobin: I am trying to show the Court my position on this point.

Now, if your Honor please, the witness now says that there were five belts of that preliminary hearing of November 2nd. Yet on October 24, 1951, at that deportation hearing, when the only belts that were being discussed were the belts of that preliminary hearing, Mr. Nolan stood up and counted eight Dictaphone belts, and he then made the statement on the record and said that there were eight and more were used, and that was specifically re-

(Testimony of Thomas J. Nolan.)

ferring and definitely referring, and only referring, if the Court please, to the November 2nd preliminary hearing or examination.

Miss Martin: I don't know if this is the time for argument, but I certainly disagree entirely with his construction of that testimony.

The Court: Counsel, I don't care to hear from you. Just let him make the statement. He wanted to make a statement of his position.

All right. You may proceed. [57]

Mr. Tobin: Can you answer the question?

The Court: I have already ruled on the question, counsel. I sustained an objection to the question. You stated you wanted to make your position clear for the record and I permitted you to do it.

Mr. Tobin: Thank you, your Honor.

Q. (By Mr. Tobin): Mr. Nolan, did you have possession of those five belts after the hearing was terminated? A. No, I did not.

Q. As a matter of fact, you didn't have possession of those eight belts after October 24, 1951, did you, Mr. Nolan?

A. It would have been shortly thereafter, whatever time I transferred the file.

Q. I am referring to the time that you handed them to Mr. Kearney; assuming that it was October 24th, you didn't have them in your possession after that at any time? A. Not that I recall.

Mr. Tobin: That's all.

The Court: Before the witness leaves the stand,

(Testimony of Thomas J. Nolan.)

rather than my asking him a question, I assume I can dispose of this by stipulation.

It is a little difficult to follow this kind of testimony, but I assume it may be stipulated that of the eight belts that have been referred to here, that five of those belts and only five were presented in evidence at the Immigration hearing of [58] November 2nd?

Miss Martin: I would so stipulate, your Honor.

The Court: And that the other three, which appear to be unaccounted for, were not in evidence, there were just these five belts that went in evidence that were before the hearing officer, considered by the hearing officer?

Mr. Tobin: Yes. I stipulate that that is the status, and we are referring to the belts as set forth on page 107 of the Immigration transcript.

The Court: I haven't read the report, but I just wanted to clear that up in my own mind. In other words, five belts and five belts only, and those five belts that are presently in evidence here are the only belts that were considered by the hearing officer at the time he passed upon the question of the deportability of the alien?

Mr. Tobin: Now, the Court has made a little different thing. The Court has said, "the only belts that were considered." I thought it was the only belts put in evidence.

The Court: The only belts that were before the hearing officer, the only ones that went in evidence?

Mr. Tobin: That's right.

(Testimony of Thomas J. Nolan.)

The Court: I am referring to all the hearings, any and all of the hearings, that there were just five belts that were before the hearing officer?

Mr. Tobin: Yes. [59]

The Court: And those five belts are the five belts that are presently in evidence here and were in evidence in the habeas corpus proceedings; the other three belts, which you have been inquiring about, were not in evidence or before the hearing officer, nor were they in evidence in the habeas corpus proceeding, nor are they in evidence here? Is that right?

Mr. Tobin: That's right.

Miss Martin: With this one correction: That in the habeas corpus proceeding there was identified as Exhibit C, that is action 15648, an envelope containing three belts.

The Court: They were marked for identification?

Miss Martin: Marked for identification.

The Court: But they were not in evidence?

Miss Martin: That is right.

The Court: Which of course would not mean so much to the layman, but which means to lawyers that the others were the only belts that were considered, so that the five belts were the only belts considered by the hearing officer Kearney in determining the question of the deportability of the alien.

Is that right?

Mr. Tobin: That's right, your Honor.



(Testimony of Thomas J. Nolan.)

The Court: All right.

Q. (By Mr. Tobin): Mr. Nolan, you heard those belts played at the hearing?

Miss Martin: Are you referring now to the five belts? [60]

Mr. Tobin: Yes.

There were only five belts played, isn't that right, Mr. Nolan?

A. I don't have any personal recollection of them being played, but I believe they were played at the hearing.

Q. How many clicks were heard at the time, Mr. Nolan?

Miss Martin: I object, your Honor, on the ground it is incompetent, irrelevant and immaterial, and the witness has already stated that he has no recollection of them being played.

The Court: Sustained. It wouldn't make any difference whether he recollected or not, it would still be immaterial.

Q. (By Mr. Tobin): Mr. Nolan, you are familiar with Dictaphone machines of the type in use and employed by the Immigration Service in 1950, are you not?

Miss Martin: Objected to on the ground it is incompetent and immaterial and irrelevant.

The Court: Sustained.

Q. (By Mr. Tobin): Mr. Nolan, in the course of your duties as an examining officer for the Immigration Service, during the years 1950 and 1951, you have played belts made by investigators and by



(Testimony of Thomas J. Nolan.)

yourself on Dictaphones for the purpose of having a playback, have you not?

Miss Martin: I object. It is immaterial.

Mr. Tobin: For the purpose of laying a foundation, your [61] Honor.

The Court: Mr. Tobin, when this witness was on the stand before, I made my ruling. You are going into that same matter again, and the ruling still applies. I permitted you to put this witness back on the stand because you indicated to me that you thought there were some additional belts.

Mr. Tobin: That's right.

The Court: And I told you that I would permit you to delve into that for the purpose of ascertaining whether there were any belts and have them marked for identification if they could be found.

Mr. Tobin: That is all.

Miss Martin: I want to ask one question, if your Honor please.

### Recross-Examination

By Miss Martin:

Q. I show you Government's Exhibit C for identification, which appears to be three Dictaphone belts——

The Clerk: Miss Martin, that is now Exhibit B.

Miss Martin: That is correct, Exhibit B for identification, which appears to be three Dictaphone belts, and ask you to look at those belts and tell me whether there are any identification marks on there that refresh your recollection as to whether or not

(Testimony of Thomas J. Nolan.)

you have ever seen those three particular belts [62] before?      A. Yes.

Q. Your recollection is refreshed as to whether you have ever seen them before?

A. I believe that I have.

Q. And where was that?

A. If I may explain.

Q. Yes.

A. Prior to this moment I did not recall the names—the name of one of the witnesses who had appeared on behalf of the government in the case, in the deportation hearing of Miss Sigurdson. However, I do recall that he appeared in only one case. He had not testified in other hearings, as far as I know.

Q. Is the name of that witness there?

A. His name appears on one of those belts, which would indicate to me that this is the statement taken from him in the subject case.

Q. And does that refresh your recollection as to whether you ever saw that belt before?

A. Not absolutely. I could not actually testify that these belts are the ones that I have seen. There is some writing on here, an impression; however, in the light I am unable to make it out clearly.

Q. Without having the belts played back on the replay [63] record, you wouldn't know whether or not those are the three belts that you referred to in your testimony here this morning?

A. No, I would not.

(Testimony of Thomas J. Nolan.)

Q. The witness whose name appears on one of these belts, what is that name? A. Kerr.

Q. In what case was he a witness?

A. In the case of Halldora Sigurdson, as I recall.

Q. Do you spell that K-e-r-r? A. Yes.

Miss Martin: That is all.

Mr. Tobin: Mr. Nolan, I am glad to hear that Immigration Service hasn't used the perjurer, Mr. Kerr.

No more questions.

Miss Martin: I think, just for the record, your Honor, I should move to strike that statement of counsel as improper.

The Court: What was the statement of counsel?

(The record was read by the reporter.)

The Court: It may be stricken. And, Mr. Tobin, I want to warn you against making any further statements of that type.

Mr. Tobin: At this time, your Honor, I realize the hour, and we have a witness, Mr. Barnhill, from the Dictaphone Corporation, and there is some kind of a convention going on in [64] town of commercial machinery and office equipment, and also there is the opening of a show at the Shrine Auditorium, I believe, tomorrow, and Mr. Barnhill asked me if he could be put on so he could be excused, because he has a great deal of duties in connection with the show and with the convention. It may be that we don't even have to put him on, but I will make the

(Testimony of Thomas J. Nolan.)

offer of proof that Mr. Barnhill, who is a representative of the Dictaphone Company, would testify, if called to the stand, that the Dictaphone machines made by his company and sold by his company during the years 1950 and '51 were of the type that would show a click each time it was stopped and started again on the same belt, and that would be audible if the belt was played back for purposes of a playback.

Will I be allowed to prove that testimony?

The Court: That is your offer of proof?

Mr. Tobin: Yes, your Honor.

Miss Martin: I will object, your Honor, on the ground it is incompetent, irrelevant and immaterial, and outside the scope of the issues in this case. I don't see the materiality of it, for one thing.

The Court: The objection is sustained.

Mr. Tobin: May Mr. Barnhill then be excused, your Honor, as a courtesy?

The Court: Yes; he may be excused. [65]

Mr. Tobin: Mr. Chandler, will you please take the stand?

### ORAL KENNETH CHANDLER

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, sir, and give us your full name.

The Witness: Oral, O-r-a-l, Kenneth Chandler.

(Testimony of Oral Kenneth Chandler.)

Direct Examination

By Mr. Tobin:

Q. Mr. Chandler, you were one of the investigating officers for the Immigration Service that took the statement of Miss Sigurdson on November 2nd and recorded it on a Dictaphone belt?

A. I took a statement from Miss Sigurdson—I am not certain of the date——

Q. I am referring, Mr. Chandler, to the one that was taken by you and Mr. Habell in Room 227 of your office on that very warm afternoon. Do you recall it now? Does that refresh your recollection?

A. I recall taking a statement from Miss Sigurdson with Mr. Habell.

Q. At that time, Mr. Chandler, you were not directly [66] connected with the investigation of the Sigurdson matter?

Miss Martin: I object, your Honor. It is immaterial.

The Court: It is a preliminary question. I assume that you are adhering to the court's ruling in that you have put Mr. Chandler on for the purpose of ascertaining whether he knows anything about any additional——

Mr. Tobin: Belts, yes, your Honor.

The Court: All right.

Q. (By Mr. Tobin): At that time you were not investigating officer in chief, shall we say, in the Sigurdson deal?



(Testimony of Oral Kenneth Chandler.)

A. At that time I was not the officer to whom the case was assigned, that is correct.

Q. And that officer was Mr. Habell who is now in court?

A. That is the best of my recollection.

Q. And that preliminary hearing or preliminary examination took from shortly after 1:00 o'clock to approximately 4:45 on November 2, 1950?

Miss Martin: I object, your Honor; it is immaterial. It does not relate to whether or not the record is complete.

The Court: The objection is sustained.

Q. (By Mr. Tobin): How many belts, how many Dictaphone belts were employed that day, Mr. Chandler, in recording the statement of Miss Sigurdson?

A. To the best of my recollection, five. [67]

Q. To the best of your recollection, five. When did you secure that recollection, Mr. Chandler?

Miss Martin: I object to that as incompetent and immaterial.

The Court: Overruled.

Mr. Tobin: I beg your pardon?

The Court: Sustained, rather.

Q. (By Mr. Tobin): You testified at the deportation hearing of Miss Sigurdson, Mr. Chandler, did you not? A. I testified, yes, Mr. Tobin.

Q. And I now——

The Court: Before we waste any time on that, counsel, you surely can't be attempting to refresh

(Testimony of Oral Kenneth Chandler.)

his recollection, because he hasn't testified to anything here.

Mr. Tobin: He said there were five belts used that day. He said there were five Dictaphone belts used that day.

The Court: I see. You want to refresh his recollection on that?

Mr. Tobin: Yes.

Q. I now hand you a copy of the transcript of this deportation hearing and ask you to look at this one question immediately above "Counsel Tobin to Examining Officer" on page 107, on the sheet dated 10-24-51. Will you please read that question and answer? A. This one right here? [68]

Q. Yes. A. Whose testimony is this?

Q. Take a look if you want to see. Look back and refresh your recollection to see who was testifying, whether or not it was you.

A. I have read the question.

Mr. Tobin: I am reading from page 107. Question to Mr. Chandler by me, and then the answer by you. Do you confirm that fact?

The Witness: You are reading from the transcript, yes.

Q. (By Mr. Tobin): "Q. Yeh, and how many belts do you know were employed that afternoon?

"A. I don't know."

Does that cause you to want to change your testimony this morning about the five belts?

A. Not at all, sir. You asked me my recollection, and that is my present recollection.

(Testimony of Oral Kenneth Chandler.)

Q. This is now almost seven years from the date of that hearing, six and a half years, is it not, Mr. Chandler?

Miss Martin: I object. It is argumentative.

The Court: Sustained.

Q. (By Mr. Tobin): All right.

Now, Mr. Chandler, this deportation hearing was exactly a year—I beg your pardon—was exactly 11 months—no. This was exactly nine days short of one year that you testified [69] you did not know how many belts. Now, how do you account for your memory or recollection being better today than it was in 1951, Mr. Chandler?

Miss Martin: I object. It is argumentative and it assumes facts not in evidence.

The Court: Sustained.

Q. (By Mr. Tobin): Now, Mr. Chandler, will you please tell the court and the record what is the basis for you saying that there were five belts used that day?

A. As I recall your original question, Mr. Tobin, it was did I recall the number of belts that were used in that statement. My memory today tells me that there were five. Now, the basis for that recollection I cannot state. That is my best recollection.

Q. But you didn't know on November 24 how many were used, did you?

Miss Martin: I object to that as incompetent and immaterial. It has been asked and answered.

The Court: Sustained. And it is argumentative.

Q. (By Mr. Tobin): Did you have charge of

(Testimony of Oral Kenneth Chandler.)

those belts at any time subsequent to the hearing on November 2nd, Mr. Chandler?

A. Are you speaking——

Q. Prior to the deportation hearing in October.

Miss Martin: I am going to object to that, your Honor, [70] again, as ambiguous, because he is referring to a hearing on November 2nd. I assume he means at the time the statement was taken from Miss Sigurdson on November 2, 1950.

The Court: The objection is sustained.

Q. (By Mr. Tobin): Directing your attention to the period November 2, 1950, to October 24, 1951, during that period did you have charge of the Dictaphone belts employed at the preliminary hearing on November 2nd of Miss Sigurdson?

A. It is my recollection that during that period the investigative case was assigned to me for investigation. In the file were contained the belts taken during the statement of Miss Sigurdson in 1950.

Q. How many belts were there during that time?

Miss Martin: I object to that question as ambiguous.

Q. (By Mr. Tobin): During the time that you had possession of the file, during the period I previously outlined, how many belts were there in the file?

A. To the best of my recollection, there were eight belts contained in the file.

Q. And that was all during the time that this was in your possession?

(Testimony of Oral Kenneth Chandler.)

A. At the time I received the file, as I recall, there were six belts. Two belts——

Q. Six belts. What was the date?

Miss Martin: Just a moment. Let the witness finish the [71] answer to his question.

Mr. Tobin: I am sorry if I interrupted you. Will you please give us the date that you received the file?

Miss Martin: Would you please permit the witness to finish the answer?

Mr. Tobin: The court will control me.

The Court: I have great difficulty controlling you, Mr. Tobin. You want to talk while everybody else is talking.

Is there a question?

Miss Martin: Will you ask the reporter to read the previous question and let the witness complete his answer?

The Court: Yes.

(The following portion of the record was read by the reporter):

“Q. And that was all during the time that this was in your possession?

“A. At the time I received the file, as I recall, there were six belts. Two belts——

“Q. Six belts. What was the date?”

The Court: Had you finished your answer?

The Witness: No.

Am I now to?

The Court: Yes.



(Testimony of Oral Kenneth Chandler.)

The Witness: Two belts were later secured, or were later made—testimony was later made on two belts in my presence [72] during the time that I had the file.

Q. (By Mr. Tobin): What was the date that you received those six belts, if you recall? I don't mean with exactitude, but generally.

A. I am sorry to say that I am unable to recall.

Q. Was that about the time that Mr. Habell went back into the service?

A. That is conceivable, but I cannot so state.

Q. Was that in April, 1951?

A. I do not know.

Q. All right. Now, you say that there were six belts when you took possession of the file——

A. That is to the best of my recollection, yes.

Q. What was the extra belt about?

A. As I recall, that was a statement made by you concerning Miss Sigurdson.

Q. What was the date on that?

A. I don't know the date on it, Mr. Tobin.

Q. What were those two other belts about that were later added?

A. The two belts that were later added consisted of testimony taken from a witness concerning his knowledge of Miss Sigurdson.

Q. Both of them were of that?

A. That is my best recollection. [73]

Q. When did you part with those belts, Mr. Chandler?

(Testimony of Oral Kenneth Chandler.)

A. Are you asking for a specific date, Mr. Tobin?

Q. No. Roughly. A. May I explain?

Q. Surely.

A. Under normal procedure when sufficient evidence is gathered to apply for a warrant of arrest, and a warrant of arrest is issued, the file passes from the control of the investigator, and it is my recollection that such took place with respect to Miss Sigurdson's case.

Q. Approximately when was that, do you know?

A. No, I do not.

Q. If I refresh your recollection and tell you that the warrant was dated, I think, October 10, 1951, does that refresh your recollection?

A. Only with reference to the general procedure I have described to you.

Q. What was the S.O.P. insofar as time on that?

Miss Martin: I object to that. It is ambiguous, S.O.P.

Q. (By Mr. Tobin): You know, your standard operating procedure. Would it be a month before, or would it be two weeks before that you parted with it?

A. I am sorry. It is just that I don't understand the question.

Q. Mr. Chandler, you say that you parted with the belts [74] after a warrant was issued; is that right?

A. Normally that was—I would say that was

(Testimony of Oral Kenneth Chandler.)

our standard procedure, when a warrant was issued normally the file was surrendered.

Q. So after you made your affidavit or certificate to Washington in accordance with the rules which were in existence at that time for a warrant, did you still retain the belts?

A. Only so long as the file was in my possession.

Q. What I am trying to find out, Mr. Chandler, is approximately how soon before October 10th or 11th did you part with those belts?

A. I don't know.

Q. And to whom did you give them then?

A. The entire file would normally be transferred to the examining officer to set a date for hearing, for deportation hearing.

Q. In this particular case, Mr. Nolan?

A. I believe Mr. Nolan conducted the hearing, therefore he must have been the man to whom the file was sent.

Q. Are you now referring to the examining officer or the hearing officer?

A. The examining officer, Mr. Nolan.

Q. That would be Mr. Nolan?

A. That is correct. [75]

Mr. Tobin: That is all.

(Testimony of Oral Kenneth Chandler.)

Cross-Examination

By Miss Martin:

Q. Do you recall at this time what was the name of the witness whose testimony was transcribed on the two other belts you referred to?

A. I recalled it only when it was brought out in the testimony of Mr. Nolan. Previous to that I did not recall.

Q. But do you now recall it?

A. Kerr. I couldn't even tell you the first name.

Q. I show you Government's Exhibit B for identification, which is an envelope which contains three Dictaphone belts, and ask you to look at those Dictaphone belts and see if there is anything there that refreshes your recollection as to whether you have ever seen those belts before.

A. Yes. The slip on there is in my handwriting and bears my initials, which would indicate to me that those are belts which I—at which I was present when the testimony was taken.

Q. Will you indicate what you mean by "the slip which bears my initials"?

A. This, for example (indicating).

Q. Referring to the third belt in the group of three which are attached, a slip there which says— [76]

A. "Q and A statement of Jack"—is that "Jack" it says? "Touren."

Q. Is that in your handwriting, that statement?

(Testimony of Oral Kenneth Chandler.)

A. Yes.

Q. And the date on here, May 10, 1951——

A. Yes.

Q. ——is that in your handwriting?

A. That's right.

Q. Does the name Jack Touren refresh your recollection as to anything with regard to the Sigurdson case?

A. Yes. His name is another one which I hadn't recalled until we just saw it now.

Q. What do you recall about it?

A. I don't know that I should discuss that matter as it may involve confidential information at this point. The court can determine.

The Court: Did it relate to the Sigurdson case?

The Witness: Yes.

Q. (By Miss Martin): Let me ask you this question: Referring to the second belt in this group of three, is there any handwriting on the card which is attached to that belt which is yours? Does the card pull out?

You can pull it out if you want to look at it.

A. There doesn't appear to be a slip on it.

The Court: Keep your voice up. I can't hear you. [77]

The Witness: There doesn't appear to be a slip on either of the other two belts.

Q. (By Miss Martin): Is there anything on the other two belts which refresh your recollection as to whether you ever saw them before?



(Testimony of Oral Kenneth Chandler.)

A. No. Without a playback of the belt itself, I could not so state.

Miss Martin: That's all.

Redirect Examination

By Mr. Tobin:

Q. And you know nothing about the two top belts, is that right, Mr. Chandler?

A. I cannot at this time say what they contain.

Q. You can't identify these? A. No.

Q. That is what I mean. And then the statement is appended to the third belt in order, and that contains the statement which you read to the court; is that right? A. That's correct.

Q. I believe you said your initials——

A. Yes. Do you see that right there (indicating)? "OKC"?

Q. Is that what that is?

A. That is what it is intended to be. And the date, [78] and the number—this would be roll No. 1.

Q. What do you mean by that?

A. This is the number of the roll. In the event that there would be more than one roll, you would number the rolls consecutively.

Q. In consecutive order? A. Yes.

Q. And there doesn't appear to be any roll number or any other marking to identify these other documents?

A. There is nothing there that I saw that would assist me.

(Testimony of Oral Kenneth Chandler.)

Q. But this Jack Touren deal you recall, and those are your initials? A. That's right.

Mr. Tobin: That is all.

Miss Martin: I have one additional question, your Honor.

Recross-Examination

By Miss Martin:

Q. Did you at any time in the Sigurdson investigation take on a Dictaphone belt the statement of a witness Kerr, K-e-r-r? A. I did.

Miss Martin: That's all.

The Court: We will recess until 2:00 p.m. [79]

Miss Martin: Your Honor, may Mr. Kearney be excused?

The Court: Yes, he may be. All of these witnesses may be excused. I am referring to the witnesses who have already testified.

Miss Martin: That's right, your Honor.

(Whereupon, at 12:05 o'clock p.m. a recess was taken to 2:00 o'clock p.m.) [80]

Tuesday, May 14, 1957, 2:00 P.M.

The Court: You may proceed.

Mr. Tobin: Mr. Habell, please.

## PHILLIP F. HABELL

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and give us your full name, please.

The Witness: Phillip F. Habell, H-a-b-e-l-l.

## Direct Examination

By Mr. Tobin:

Q. Mr. Habell, you are an Immigration officer and were so on November 2, 1950?

A. Yes, sir.

Q. You were the officer in charge of the investigation and took a statement from Miss Sigurdson at a preliminary hearing on November 2, 1950?

A. Yes, sir.

Q. How many belts did you use at that time?

A. Five.

Q. Five? [81] A. Yes, sir.

Q. Did you ever testify before the Hearing Officer Kearney that you didn't know how many belts were used?

A. I don't recall at this time.

Q. All right.

Now, Mr. Habell, how many transcripts were made of that proceedings?

Miss Martin: I object to that, your Honor, on the ground it is immaterial. The transcript, which is contained in Exhibit A, the certified Immigration

(Testimony of Phillip F. Habell.)

file in evidence in this case is conceded to be a correct transcript.

The Court: Sustained.

Mr. Tobin: May I have the transcript, I believe it is Plaintiff's 1 for identification, the transcript furnished this morning?

Q. (By Mr. Tobin): I show you Plaintiff's 1 for identification, Mr. Habell, and ask you to take a look at it and see if that means anything to you. Can you please tell us, Mr. Habell, whether Plaintiff's 1 for identification is a transcript that you presented to Miss Sigurdson subsequent to the hearing on November 2nd?

A. I am unable to state at this time whether or not this is a copy of the transcript that I presented to her.

Q. Are you able to state that the copy of the transcript that is in Exhibit 7 of the administrative hearing was [82] ever presented to Miss Sigurdson by you?

Miss Martin: I object to that, your Honor. There isn't any transcript in any Exhibit 7. There isn't any Exhibit 7 that I know of.

Mr. Tobin: Exhibit 7 in Exhibit 2 of the hearing. Exhibit 7 is the transcript that is part of the official record. It is marked as Exhibit 7 in the administrative record.

Miss Martin: Do you mean Exhibit A in evidence?

Mr. Tobin: In Exhibit A, that's right. Exhibit 7 of Exhibit A.

(Testimony of Phillip F. Habell.)

Miss Martin: I believe Exhibit 7, your Honor, is the envelope containing the belts.

Mr. Tobin: The belts were just attached to the exhibit.

Miss Martin: The notation Exhibit 7 is on an envelope. It isn't on any statement that I know of.

Mr. Tobin: Well, it doesn't matter. I think the record will substantiate me on that, your Honor.

Miss Martin: All I want to do is object to the question until it is understandable.

The Court: What is the purpose of this? Are you trying to impeach that record?

Mr. Tobin: Yes, your Honor, I am trying to show that the record is not complete, and I am trying to find out from this witness whether the transcript in the administrative record was ever presented to her, to the plaintiff, for her signature, [83] and whether that is the same transcript that was presented to her on November 8th or 10th, as well as on the 14th. That is what I am trying to bring out.

Miss Martin: On the question of whether she ever signed it or not, the record speaks for itself.

The Court: In addition to that, whether the record speaks for itself, don't you see you are now going into this record, which was a part of the previous proceeding? In the first place, the record which is Exhibit 1 here—is that Exhibit 1?

The Clerk: Exhibit A.

The Court: The record which is Exhibit A is the record which was before the hearing officer and



(Testimony of Phillip F. Habell.)

the Board of Immigration Appeals at the time of the proceeding before the Immigration Service, and it is the record that was before the court at the time of the judicial review, and it is the record that was before the Court of Appeals at the time of the appeal from the judgment on the judicial review.

Mr. Tobin: That's right, your Honor, but what I am trying to show at this proceeding, if the court please, is that there were other transcripts, and when the court reviews the transcript of the administrative hearing the court will notice that the hearing officer said at one time, "What difference does it make whether there were other transcripts if the transcript that we now have is accurate?" [84]

The point that I have been trying to convey all these years, your Honor, and I have been unsuccessful so far, is that there were eight belts presented, when only five were required to make the transcript. When there is testimony in the administrative record that that is not the same transcript that was presented to the alien and her counsel on two different occasions, then there is room for investigation, that is the thing that I am trying to convey, your Honor. I am trying to bring it out.

Miss Martin: I will object on the ground that it is immaterial on that point, your Honor, because I don't find——

The Court: The objection is sustained.

Q. (By Mr. Tobin): Mr. Habell, can you tell us what Exhibit 1 is? I beg your pardon. Exhibit 1 for identification, what that is?

(Testimony of Phillip F. Habell.)

A. It appears to me to be a recording, or I should say the typewritten record of the statement made to me by Miss Sigurdson, with my corrections placed thereon in order to make the stenographic typewritten form correspond to what was actually said.

Q. Is this transcript exactly like the transcript that was introduced in the administrative hearing?

Miss Martin: I object to that on the ground it is immaterial, incompetent, and not within the knowledge of this witness. [85]

The Court: The objection is sustained.

Q. (By Mr. Tobin): Was this transcript, Exhibit 1 for identification, made from the belts that were used on November 2nd, Mr. Habell?

A. Yes.

Mr. Tobin: At this time we offer into evidence a copy of the transcript with the interlineations, corrections, by the witness, as a plaintiff's exhibit.

Miss Martin: I object to it on the ground it is incompetent, irrelevant and immaterial. The transcript of the plaintiff's statement, which is in the administrative file, is the part of the record that is contained in Exhibit A here, and this is immaterial.

The Court: Sustained.

Q. (By Mr. Tobin): I show you here—this has already been admitted. I am sorry.

Miss Martin: I think you are in error, counsel. I think it is marked Exhibit 2 for identification.

The Clerk: It is marked for identification.

Mr. Tobin: I am sorry.

(Testimony of Phillip F. Habell.)

Q. I show you here a nine-page document. Will you please take a look at it, Mr. Habell?

A. I have taken a look. Do you want me to read it all?

Q. Do you recall what it was? Now, you don't have to read it. Do you remember having received that or seen that before? [86]

A. This one, particularly, I don't know. I recall that something similar to this was presented to me by you.

Q. Did it bear the verified signature of Halldora Kristin Sigurdson, the one that was presented to you?

Miss Martin: I object on the ground it is immaterial.

The Court: Sustained.

Mr. Tobin: At this time I offer Exhibit No. 2 for identification into evidence as Plaintiff's Exhibit 2, and may I point out to the court that this is the document that was brought by the District Director this morning, and when the court has an opportunity to read the transcript of the administrative hearing it will see that this was adopted as part and parcel of the argument of counsel in a motion to dismiss the entire proceedings, and it was never made a part of the record, and this is one of the documents that plaintiff has objected to, and it was not part of the habeas corpus proceeding and we would like to have it part of this?

Miss Martin: I would object on the ground that this is immaterial because this is not a part of the

(Testimony of Phillip F. Habell.)

hearing record, unless counsel can show me somewhere in Exhibit A, the administrative file, that there is some reference to this document, so that it should be made a part of the record. It never was attached as an exhibit, and there is no reference to it that I know of. [87]

The Court: The objection is sustained.

I don't know whether counsel doesn't understand my rulings, or whether he just deliberately keeps going over the same thing.

As I have stated before, even if there hadn't been a judicial review before, if there had been no habeas corpus proceeding at which time you have a judicial review, if there had been no appeal, if we had nothing before us except the question of a judicial review—in other words, if this court were judicially reviewing the procedure—even then this would not be properly before this court, because it wasn't before the hearing officer, and it is not a part of the record that was being reviewed.

Now, of course, if it were a matter of something that had been offered and improperly rejected, then, of course, that would be considered by this court, but that would be shown in the record. In other words, if you offered it in evidence in the administrative hearing, and it was rejected, then this court might consider it. However, even assuming that that situation existed, that it had been offered in evidence, and that the hearing officer rejected it, still insofar as this proceeding here today is concerned, this court couldn't consider it because, of



(Testimony of Phillip F. Habell.)

course, it would merely mean that you were rehashing the prior judicial review, and that is something that I indicated before cannot be done. [88]

Mr. Tobin: I appreciate the court granting me the privilege of presenting evidence for the record, I appreciate that, and I understand the court's permission, but I would like, if I may, to call the attention of the court to 151.3, subdivision (a) of 8 C.F.R., which says that testimony and exhibits together with all written motions and other papers and requests filed in the proceedings shall constitute the record in this case.

Now, if the court please, I objected before the Board of Immigration Appeals because this document, amongst others, was missing. I contended that this section of the C.F.R. says it should have been there. It wasn't.

The Court: Mr. Tobin, I don't want to argue with you. You just proceed and I will rule because you just cannot understand me.

I tried my best to make it as clear as possible, but you just cannot understand me.

The thing is so clear. If in my personal opinion as I sit here now I thought the hearing officer was wrong, and the Board of Immigration Appeals was wrong, I am bound by the previous hearing, the judicial review that has already been had, and the decision of the Court of Appeals. I realize that you have asked me, you were very clear and frank about it, that you have asked me this morning that you expected me to reverse the Court of Appeals. But



(Testimony of Phillip F. Habell.)

I cannot reverse the Court of Appeals. [89] That is my position, that I can't reverse the Court of Appeals. They went through this whole thing. I don't doubt but what you have read their opinion many, many times.

Mr. Tobin: I have it right now.

The Court: The judge even went through and referred to all of this evidentiary matter, and this clicking that you wanted to put the man on the stand for. He went into all of that. And I just take the position that I may not reverse the court.

You cannot change that record. That is why I have been permitting you here to mark these for identification. Rather than sit here and argue and fight with me, if I am wrong you will have them marked for identification and they may be before the Court of Appeals, and at that time you can point out to the Court of Appeals that you tried to supplement a record which was before the Board of Immigration Appeals, and you tried to supplement a record that was before the court before on a judicial review, and you tried to supplement a record that was before the Court of Appeals, and that I would not permit you to supplement the record, you merely had them marked for identification.

Mr. Tobin: Cross-examine.

Miss Martin: No questions.

The Court: You may step down.

Mr. Tobin: Miss Sigurdson, would you please take the [90] stand?

HALLDORA KRISTIN SIGURDSON

called as a witness herein by and on her own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and give us your full name, please?

The Witness: Halldora, H-a-l-l-d-o-r-a, Kristin, K-r-i-s-t-i-n, Sigurdson, S-i-g-u-r-d-s-o-n.

Direct Examination

By Mr. Tobin:

Q. Miss Sigurdson, you are the plaintiff and the alien in this matter? A. Yes.

Q. You were present at the preliminary hearing on November 2, 1950, in Room 227 of the Immigration Service office? A. I was.

Q. Was this statement recorded on a Dictaphone belt? A. It was.

Q. Do you know how many Dictaphone belts there were?

A. No; I do not know the specific number, but I do know there were many belts.

Q. You heard the statement that there were five belts; [91] can you tell the court whether in your opinion that is accurate, whether there was five belts or whether there was more than five belts used?

Miss Martin: I object to that question as incompetent and irrelevant, and her opinion is immaterial.

(Testimony of Halldora Kristin Sigurdson.)

The Court: Sustained. You know better than that.

Q. (By Mr. Tobin): Miss Sigurdson, approximately how many belts were used?

Miss Martin: I object to that on the ground it has been asked and answered; and also it is immaterial.

The Court: Sustained.

Q. (By Mr. Tobin): Miss Sigurdson, did you have control of that machine that morning?

Miss Martin: I object to that as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Tobin: It is preliminary to the next thing.

Q. Would you tell the court how many times you saw Mr. Habell or Mr. Chandler change the belts?

A. It could have been a dozen times; it could have been more.

Q. I beg your pardon?

A. It could have been a dozen times; it could have been more.

Q. It could have been a dozen times or it could have [92] been more.

I ask the court's indulgence on this.

How many transcripts were presented to you for inspection as so-called transcripts of the Dictaphone belts of that hearing?

Miss Martin: I object on the ground it is immaterial.

The Court: All right.

Q. (By Mr. Tobin): Now, Miss Sigurdson, you

(Testimony of Halldora Kristin Sigurdson.)

were present at the hearing before Hearing Officer Kearney, and did you see anybody count any Dictaphone belts in open sight at that hearing?

A. Yes.

Miss Martin: I object. It is immaterial.

The Court: Sustained.

Q. (By Mr. Tobin): How many belts were counted?

Miss Martin: I object——

The Witness: Eight.

Miss Martin: Will the witness please refrain from answering until I have had a chance to object to the question?

I object on the ground it is immaterial.

The Court: Sustained.

I suggest that you make a motion to strike the testimony.

Miss Martin: I move to strike the answers to the last two questions for the purpose of making the objection to the [93] questions on the ground that they are immaterial.

The Court: Granted.

Q. (By Mr. Tobin): Miss Sigurdson, did you see anybody hand the Dictaphone belts to Hearing Officer Kearney?

Miss Martin: I object on the same grounds; immaterial.

The Court: Sustained.

Q. (By Mr. Tobin): Do you know or can you tell us whether any belts—first I will ask you this: Did you see those belts removed from an envelope?

(Testimony of Halldora Kristin Sigurdson.)

Miss Martin: Objected to as immaterial.

The Court: Objection sustained.

Do you have any offer of proof?

Does she have the belts?

Mr. Tobin: No.

Q. Do you have any of those belts, Miss Sigurdson?  
A. No; I do not.

Q. Did you ever have any?

A. No; I did not.

Q. Did you ever even as much as touch them, to the best of your knowledge?

A. No; I never did.

Mr. Tobin: At this time I make the offer of proof, your Honor, that the witness would testify that she saw Examining Officer Nolan take all of the belts that were in the envelope, which he had previously counted, at the hearing, to the [94] number of eight, and hand all of those belts to Hearing Officer Kearney as the belts of the preliminary hearing of November 2nd.

Miss Martin: I object on the ground it is immaterial.

The Court: Sustained.

Mr. Tobin: That's all.

Miss Martin: No questions.

The Court: You may step down.

Mr. Tobin: Pardon me. May I ask one more question?

Q. When those belts were played at the hearing, did anybody express—did anybody from the Immigration Service, whether it be Hearing Officer



(Testimony of Halldora Kristin Sigurdson.)

Kearney or Examiner Nolan—as to the number of clicks that were heard at that time?

Miss Martin: Objected to as immaterial.

The Court: Sustained.

Q. (By Mr. Tobin): Did you testify on the record based upon what you had been told at that hearing as to the number of clicks that were heard when the instrument was played?

Miss Martin: Objected to as immaterial, and Exhibit A is the best evidence.

The Court: Sustained.

Mr. Tobin: That is all, your Honor.

The Court: You may step down.

Mr. Tobin: Plaintiff rests, your Honor.

Miss Martin: Your Honor, in the previous habeas corpus [95] proceeding there was an Exhibit D, which we had some difficulty—A in Exhibit A, which we had some difficulty in locating, and the clerk advises me that the warrant of deportation contained in the Immigration file, which is now Exhibit A in this case, was marked Exhibit A in the previous habeas corpus case. I just want the record to be clear on that, so that the record will not have any doubt but what we have here all of the exhibits that were in the previous habeas corpus case. We so far hadn't spoken about Exhibit A from the habeas corpus case, but that was the warrant of deportation, which was so marked in the other case. Since it is already contained in Exhibit A in this case, I see no reason to remark it in this case.

The Court: It is in evidence now in this case?

Miss Martin: In Exhibit A, so I see no reason to mark it separately.

The Court: Are all of the exhibits that were in the habeas corpus proceedings all in evidence here now?

Miss Martin: We have covered Exhibits A, B and C.

The Clerk: There is one other exhibit. D, your Honor.

The Court: Is that the one that was just marked for identification, that other brown envelope?

Mr. Tobin: No. That was C in the other action, your Honor. It is B here.

Miss Martin: I am now referring to Exhibit D in the [96] habeas corpus action 15648, which was a carbon copy of a matter dated June 12, 1953, which appears to be a decision of the Chairman of the Board of Immigration Appeals, and I ask that the clerk mark that Government's next in order for this action.

The Court: Was that in evidence?

The Clerk: It was only for identification in the habeas corpus action.

The Court: Then it will just be marked for identification here.

Miss Martin: And it will be Government's Exhibit C, for identification, in this action.

(The exhibit referred to was marked as Government's Exhibit C for identification.)

Miss Martin: As far as I can ascertain, that

brings into this action all of the exhibits, either for identification or in evidence, in the previous habeas corpus action, and all the pleadings and files from the previous habeas corpus matter.

The Clerk: Your Honor, may we check further with reference to the minutes in this case, to make sure that that is the exhibit? That is the only method I have of checking the record to find out what Exhibit A actually was.

Miss Martin: The only reference in the previous habeas corpus action to what Exhibit A was, and the question arises because we had Exhibits B, C and D, so we assume there must [97] have been an Exhibit A, is contained in the return to the order to show cause, in answer to the petition for a writ of habeas corpus, which was filed June 29, 1953, and on page 2 thereof in paragraph 3 it refers to the warrant of deportation attached to that document as Exhibit A, and as far as we can tell from the records, then, that apparently also became Exhibit A for identification and was given that number.

If that is not so, then there was nothing marked as Exhibit A in the previous action. Unless you have something further, Mr. Clerk.

The Clerk: That is all I can find, your Honor.

Miss Martin: The government rests, your Honor.

The Court: Argument?

Mr. Tobin: Would the court prefer to have an oral argument, or would it want the matter to be submitted on briefs?

In view of the fact that the court's position has been as it is, and the plaintiff takes an entirely

different attitude, I think it might be advisable, if it meets with the court's pleasure, to file points and authorities on it, so there would be no question of misstatement or misunderstanding.

I am prepared to make some type of an argument, such as it is.

The Court: If you prefer that, it is all right.

Mr. Tobin: Whatever meets with the court's pleasure. [98] I would be grateful——

The Court: The court will take it under submission, and you may file a memorandum of points and authorities.

You will have 15, 15 and 15.

Mr. Tobin: Good.

The Court: 15, 15 and 5, rather.

Mr. Tobin: That is okay.

The Court: 15 days for the plaintiff and 15 days for the defendant, and then 5 days for the plaintiff.

I will take it under submission. [99]

### Certificate

I hereby certify that I am a duly appointed, qualified, and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 5th day of November, 1957.

/s/ SAMUEL GOLDSTEIN,  
Official Reporter.

[Endorsed]: Filed November 12, 1957. [100]

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[Title of District Court and Cause.]

### CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal in the above-entitled case:

A. The foregoing pages numbered 1 to 52, inclusive, containing the original:

Complaint for Declaratory Judgment and Injunction.

Order to Show Cause and Temporary Restraining Order.

Certified Copy of Order of Court of Appeals for Ninth Circuit re Order Submitting and Granting Motion for Restraining Order re Deportation of Appellant.

Answer to Complaint.

Notice of and Motion for Order of Court Transferring to This Action the Record, Findings, Judgment and Proceedings in Habeas Corpus Action in This Court, in the Matter of Hall-dora Kristin Sigurdson, No. 15648-C, etc.



Points and Authorities in Support of Objections to Motion of the Defendant Del Guercio, filed 2/19/57.

Objections to Points Set Forth in Motion of Defendant Del Guercio, filed 2/19/57.

Minute Order of Court, 3/25/57.

Order Granting Motion to Transfer to This Action the Records and Entire Proceedings in the Matter of Halldora Sigurdson, No. 15648-C, etc.

(Copy) for Subpoena Duces Tecum, Directed to Albert Del Guercio.

Minute Order of Court, 5/14/57.

Memorandum of Decision.

Judgment.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Statement of Points on Appeal.

Defendant's Counter Designation of Contents of Record on Appeal.

Order Extending Time to File and Docket Record on Appeal.

B. The foregoing pages, numbered 1 to 119, inclusive, containing the original documents filed in Case No. 15648-C, in the Matter of Halldora Kristin Sigurdson, for Writ of Habeas Corpus, ordered transferred to and made part of Case No. 18089-WM:

Petition for Writ of Habeas Corpus.

Order to Show Cause.

Notice of Intention to File Petition for Writ of Habeas Corpus.

Return to Order to Show Cause and Answer to Petition for Writ of Habeas Corpus.

Respondent's Memorandum of Points and Authorities.

(Copy) Minute Order of Court, 6/30/53.

Traverse to Return to Order to Show Cause and Answer to Petition for Writ of Habeas Corpus.

Notice of Failure to Comply With Order to Show Cause and Order Made in Open Court and Demand for Compliance of Same.

Affidavit in Support of Motion to Withdraw Document From Exhibit B of Respondent's Return to Order to Show Cause on File Herein.

Order to Withdraw Document From Exhibit B of Respondent's Return to Order to Show Cause on File Herein.

Petitioner's Points and Authorities Opposing Respondent's Memorandum.

Order for Release on Bond.

Affidavit in Support of Motion for Release on Bond of Petitioner.

(Copy) Minute Order of Court, 7/13/53.

Subpoena Duces Tecum Directed to District Director, Immigration and Naturalization at Los Angeles.

Motion of United States for and Order to Quash Subpoena Duces Tecum Served on "District Director of 16th District at Los Angeles, etc."

Affidavit of H. R. Landon in Support of Motion to Quash Subpoena Duces Tecum.

Subpoena Duces Tecum Directed to Federal Bureau of Investigation.

Motion of United States for an Order to Quash Subpoena Duces Tecum Served on "District Director of Los Angeles, Office of Federal Bureau of Investigation."

Affidavit of John F. Malone, Special Agent in Charge, Federal Bureau of Investigation.

Points and Authorities in Support of Motion to Quash Subpoenas Duces Tecum.

Notice of Motion for Rehearing of Decision Denying Petition for Writ of Habeas Corpus, etc.

(Copy) Minute Order of Court, 7/14/53.

Findings of Fact, and Conclusions of Law.

(Copy) Judgment, Lodged 7/14/53.

(Copy) Minute Order of Court, 7/15/53.

Objections to Amended Findings of Fact, etc.

Findings of Fact, and Conclusions of Law, filed 7/28/53.

Judgment, entered 7/28/53.

Notice of Appeal, filed 7/30/53.

Order Restraining Respondents From Removing Petitioner From Jurisdiction Pending Final Adjudication of Her Appeal.

Notice of Motion for Bail on Appeal.

(Copy) Minute Order of Court, 8/10/53.

Order Denying Motion for Bail.

Notice of Appeal to United States Court of Appeals From Order Denying Bail on Appeal.

Stipulation as to Designation of Contents of Record on Appeal From Order Denying Release on Bond on Appeal.

Order Extending Time to File Record on Appeal and Docket the Cause.

(Copy) Order Court of Appeals for Ninth Circuit, re Admitting Appellant to Bail Pending Appeal.

(Copy) Minute Order of Court, 3/2/54.

Mandate Court of Appeals for Ninth Circuit, dated 2/27/54, re: Reversal of District Court Denying Appellant's Motion for Bail Pending Appeal, etc.

Mandate Court of Appeals for Ninth Circuit, Dated 3/28/55, re: Affirming Judgment District Court.

C. Plaintiff's Exhibits 1 and 2. Defendant's Exhibits A, B and C.

D. One volume of Reporter's Official Transcript of Proceedings had on:

May 14, 1957.

E. (Filed in Case No. 15648-C) Two volumes of Reporter's Official Transcript of Proceedings had on:

June 30, 1953; July 13, 14, 15 and August 10, 1953.

I further certify that my fee for preparing the foregoing record, amounting to \$3.20, has been paid by the appellant.

Witness my hand and the seal of said District Court on this 14th day of November, 1957.

[Seal]                      JOHN A. CHILDRESS,  
Clerk;

By /s/ WM. A. WHITE,  
Deputy Clerk.

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[Endorsed]: No. 15790. United States Court of Appeals for the Ninth Circuit. Halldora Kristin Sigurdson, Appellant, vs. Albert Del Guercio, etc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed November 15, 1957.

Docketed: November 18, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



United States Court of Appeals  
for the Ninth Circuit

No. 15790

HALLDORA KRISTIN SIGURDSON,

Appellant,

vs.

ALBERT DEL GUERCIO,

Appellee.

STIPULATION THAT EXHIBITS MAY BE  
CONSIDERED IN THEIR ORIGINAL  
FORM

It is hereby stipulated by and between the above-named parties, through their respective counsel of record, that the exhibits may be considered in their original form without the necessity of reproducing them in the printed record.

Dated at Los Angeles this 20th day of November, 1957.

/s/ JOHN P. TOBIN,

Attorney for Appellant.

LAUGHLIN WATERS,

U. S. Attorney;

/s/ ARLINE MARTIN,

Assistant U. S. Attorney,  
Attorneys for Appellee.

[Endorsed]: Filed November 22, 1957.

[Title of Court of Appeals and Cause.]

APPLICATION FOR ORDER THAT CLERK'S  
TRANSCRIPT IN APPEAL No. 13974 BE  
CONSIDERED IN ITS ORIGINAL FORM  
AS PART OF THE RECORD ON THIS  
APPEAL; AND ORDER THEREON

The District Court number of the present appeal was No. 18089-WB. A prior action for habeas corpus was numbered 15648-C and became on appeal No. 13974. In that latter appeal there was a one-volume Clerk's Transcript in typewritten form.

At the trial of the present case in the District Court, the file and pleadings in the District Court Action No. 15648-C were made a part of the file and proceedings in Action No. 18089-WB, and, therefore, are properly a part of the Clerk's Transcript on Appeal.

There is only one typewritten copy of the one-volume Clerk's Transcript in Appeal 13974 available. However, it would cost the Government Approximately \$400.00 to have this reprinted on the present appeal. While it is a necessary part of the record on appeal, it appears that the present one copy of the one-volume Clerk's Transcript in Appeal 13974 contains all that is necessary, and if considered by this Court in its original form would result in a saving to the Government of \$400.00.

Appellee therefore moves this Court for its order that the one copy of the one-volume Clerk's Tran-

script in Appeal 13974 be considered in its original form as a part of the Transcript of Record in the present appeal for the reasons above indicated.

LAUGHLIN E. WATERS,  
United States Attorney;

RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief of Civil Division;

ARLINE MARTIN,  
Assistant U. S. Attorney;

/s/ ARLINE MARTIN,  
Attorneys for Appellee.

### ORDER

Good cause appearing therefor, It Is Hereby Ordered that the one typewritten copy of the Clerk's Transcript in Appeal 13974 be marked as a part of the Transcript of Record in the present action and be considered by this Court in its original form.

Dated: January 16th, 1958.

/s/ STANLEY W. DAWES,  
Judge, Circuit Court of Ap-  
peals for the Ninth Circuit.

[Endorsed]: Filed January 17, 1958.

